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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Vince Chhabria, Judge

IN RE: FACEBOOK, INC. )  
CONSUMER PRIVACY USER ) MDL NO: 2843  
PROFILE LITIGATION )  
 ) MD 18-2843 VC  
 )

San Francisco, California  
Wednesday, July 18, 2018

**TRANSCRIPT OF PROCEEDINGS**

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Wednesday - July 18, 2018

10:09 a.m.

P R O C E E D I N G S

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**THE CLERK:** Calling case number 18-MD-02843, In Re: Facebook, Inc., Consumer Privacy User Profile Litigation.

Counsel, please step forward and state your appearances for the record.

**THE COURT:** Come on up.

**MS. WOLFSON:** Good morning, Your Honor. Tina Wolfson on behalf of plaintiff Diaz Sanchez.

**THE COURT:** Good morning.

**MR. SOBOL:** Good morning, Your Honor. Michael Sobol from Lief Cabraser Heimann & Bernstein on behalf of plaintiffs Beiner and Haubert.

**THE COURT:** Good morning.

**MR. SIEGEL:** Good morning, Your Honor. Norm Siegel, Stueve Siegel Hanson in Kansas City, for Plaintiff O'Kelly.

**MS. WEAVER:** Good morning, Your Honor. Lesley Weaver, Bleichar Fonti & Auld, on behalf of plaintiff Scott Schinder.

**MS. DOSS:** Good morning, Your Honor. April Doss from Saul Ewing Arnstein & Lehr, on behalf of plaintiff Elaine Pelc.

**MR. LOESER:** Morning, Your Honor. Derek Loeser from Keller Rohrback on behalf of plaintiff Haslinger.

**MR. KIMPSON:** Good morning, Your Honor. Marlon Kimpson, with the law firm of Motley Rice, on behalf of

1 plaintiffs Picha and Skotnicki.

2 **MR. FRIEDMAN:** Good morning, Your Honor. Andrew  
3 Friedman with Cohen Milstein Sellers & Toll, on behalf of  
4 plaintiffs Burk, Grisi and Ariciu.

5 **MR. GIBBS:** Good morning, Your Honor. Eric Gibbs,  
6 Gibbs Law Group, on behalf of plaintiff King.

7 **MS. BLATT:** Good morning, Your Honor. Gayle Blatt  
8 from Casey Gerry on behalf of plaintiff Lucy Gerena.

9 **MS. RIVAS:** Good morning, Your Honor. Rosemary Rivas  
10 of Levi & Korsinsky on behalf of plaintiff Barbara  
11 Vance-Guerbe.

12 **MR. RUYAK:** Morning, Your Honor. Robert Ruyak of  
13 Ruyak Cherian on behalf of the Redmond, et al, plaintiffs.

14 **MR. CARLIN:** Morning, Your Honor. Nicholas Carlin,  
15 Phillips, Erlewine, Given & Carlin, on behalf of plaintiff  
16 Rubin.

17 **MR. BATES:** Good morning, Your Honor. Hank Bates with  
18 Carney Bates & Pulliam on behalf of plaintiff Theresa Beiner.

19 **MR. SMITH:** Good morning, Your Honor. Todd Smith,  
20 Power Rogers and Smith, on behalf of the plaintiff Reninger.

21 **MR. GRUBB:** Good morning, Your Honor. Archie Grubb  
22 from Beasley Allen Law Firm on behalf of plaintiff Victoria  
23 Williams and Lee Sims.

24 **MR. VLAHAKIS:** Good morning, Your Honor. James  
25 Vlahakis, V-L-A-H-A-K-I-S, on behalf of plaintiffs Victor

1 Comforte and Michael Carr.

2 **MR. HEDLUND:** Good morning, Your Honor. Dan Hedlund  
3 from Gustafson Gluek on behalf of plaintiff Scott Schinder.

4 **MR. McGEE:** Good morning, Your Honor. Ryan McGee from  
5 the law firm of Morgan and Morgan on behalf of the plaintiff  
6 Lauren Price.

7 **MR. HUGHES:** Good morning, Your Honor. Craft Hughes  
8 on behalf of plaintiff Matthew Lodowski in the Texas matter.  
9 Thank you.

10 **THE COURT:** All right. And for the defendants?

11 **MR. SNYDER:** Morning, Your Honor. Orin Snyder from  
12 Gibson Dunn for Facebook, the defendants. Kristin Linsley,  
13 Josh Lipshutz and Brian Lutz, from Gibson Dunn, as well.

14 **THE COURT:** Good morning, everyone. So we have a  
15 handful of things to talk about today, I guess. Let me maybe  
16 tic off a list of things that I want to cover. And then if  
17 anybody has any suggestions for things to add, let me know.

18 I suppose we could start with discussing the applications  
19 to be lead counsel. We should discuss the schedule. I saw  
20 that Facebook proposed a schedule for adjudicating a motion to  
21 dismiss, or motions to dismiss, and we can talk about whether  
22 that makes sense or whether the plaintiffs' suggestions about  
23 scheduling make more sense.

24 We can discuss also whether -- we can at least have a  
25 preliminary discussion of whether it makes sense to stay

1 discovery. My guess is that it might not be -- it might be  
2 better to not decide that at this status conference but give  
3 you an opportunity to brief it a little further. But we can at  
4 least have a preliminary discussion about that.

5 I want to talk -- I want to have a preliminary discussion  
6 about how the bankruptcy proceedings relate to this proceeding.  
7 Talk about what kind of magistrate judge referrals, if any, we  
8 should do for these proceedings. Settlement or discovery. In  
9 my other MDL, I handled the discovery disputes myself and I'd  
10 be open to doing that here, as well, but we can talk about  
11 that.

12 And I have a few other little questions that will probably  
13 come up along the way, but those are the primary items I wanted  
14 to discuss today.

15 Maybe if anybody -- if anybody from the group of ten has a  
16 suggestion about anything else we should be discussing, you can  
17 bring that up when we talk about your application to be lead  
18 counsel. But for now, from Facebook, is there anything else we  
19 ought to cover today?

20 **MR. SNYDER:** No, Your Honor. That sounds exactly  
21 right.

22 **THE COURT:** Then why don't we start with hearing from  
23 the ten lawyers I identified as quote/unquote "finalists" in  
24 this beauty contest. And why don't I just hear from you in the  
25 order you were listed on the order I put out a couple of days



1 ago. Which means that Gayle Blatt is first.

2 **MS. BLATT:** Good morning, Your Honor.

3 **THE COURT:** Good morning.

4 **MS. BLATT:** It's a pleasure to be here. So if you  
5 want me to just add to my application and provide some  
6 information I'm happy to do that, unless you want to ask any  
7 questions preliminarily.

8 **THE COURT:** No. I mean, I guess one question I might  
9 ask you is why does your client have standing?

10 **MS. BLATT:** Well, that's a very good question. My  
11 client has standing because my client has had their PII, or the  
12 documents and the information that was contained in their  
13 Facebook -- in their Facebook -- I can't think of the word --  
14 but their Facebook program taken through the unconsented to  
15 friends of people who downloaded the personality test.

16 So for that reason, I believe that the terms of service  
17 that to the extent that they are applicable here -- and I think  
18 there's going to be a big dispute about that, at least certain  
19 portions of them -- would be an irrelevant -- an irrelevant  
20 issue.

21 **THE COURT:** Well, what's the injury that -- what's the  
22 actual injury? Because in federal court, you know, you have to  
23 have Article III standing which means you have to have suffered  
24 an actual injury. What's the actual injury that your client  
25 suffered as a result of Facebook's misuse of your information?

1           **MS. BLATT:** Well, I think there are constitutional  
2 violations. I think there are violations of right to privacy.  
3 I think there are violations of contract with Facebook. I  
4 think that there is a cognizable injury in the sense that all  
5 of the plaintiffs, or all of the Facebook users, are at an  
6 increased risk of having their data used nefariously.

7           I will also say that in our complaint I believe that we  
8 point out some of the statements from one of the app developers  
9 who did not use the information nefariously where he stated  
10 that Facebook was just giving him the data, giving him the  
11 data; and with the data that he had that he could, basically,  
12 recreate the persona of the friends of the people who  
13 downloaded the digital This-Is-Your-Digital-Life application.

14           So I believe there are grave consequences and I do believe  
15 that the plaintiffs will be able to establish standing on  
16 several claims.

17           And so do you have any other questions or would you like  
18 me to just add something -- I don't want to repeat what's  
19 already in my papers.

20           **THE COURT:** If you have anything to add or any short  
21 summary, please feel free to do so.

22           **MS. BLATT:** Sure. Well, one of the things I wanted to  
23 just point out is I do believe that injunctive relief is going  
24 to be a major component of this case. I think that the key  
25 here, at least preliminarily, is to find out who has the data

1 that can be used nefariously, give back the data, and find out  
2 how to correct the consumers' interests. So that would be one  
3 of the priorities that I would set and for that reason I think  
4 there should not be a stay on discovery. Because despite  
5 public statements that information was going to be revealed, it  
6 has not been revealed. And we all know about the violations of  
7 the previous consent decree. So I think there's going to need  
8 to be some additional interaction with the Court on this to  
9 compel the information that is needed to begin to understand  
10 the magnitude of the problem and how to fashion a solution to  
11 protect the consumer.

12 I also just wanted to point out a few cases that are not  
13 in my papers directly because I was -- they were not in the  
14 Northern District of California. The U.S. District Courts.  
15 But one of them was the *Sung* case which Magistrate Judge Beeler  
16 just granted final approval on, which Ms. Rivas was my  
17 co-counsel on that.

18 And one of the -- one of the requirements in that case  
19 included a robust. It was a company that fell for a phishing  
20 scam and released the W-2 information for their employees. And  
21 one of the issues there was that clearly there was inadequate  
22 training, or that retraining was necessary. And one of the  
23 things that Ms. Rivas and I insisted upon in that case was that  
24 an independent trainer come through and do the training in  
25 addition to regular updates on training on how people are

1 supposed to deal with PII. And the court did retain  
2 jurisdiction to oversee the reports of that injunctive relief.

3 And in addition, I just finished a case where preliminary  
4 approval -- it's not finished yet -- but it was in the state  
5 court in San Diego where preliminary approval was just granted  
6 last week where we had the same thing. It was a violation of  
7 landlord/tenant rights and improper taking -- allegations -- of  
8 security deposit funds. And that, too, required the  
9 settlement -- a very robust multi-million dollar injunctive  
10 program wherein the defendant is required to submit reports to  
11 the court and to counsel periodically over the next several  
12 years. And we are -- the court retained jurisdiction to  
13 enforce those if the audits of those -- of the compliance is  
14 not accurate.

15 And I have a few others. *Blue Shield*, which was before  
16 Judge Wiss, which was recently granted final approval. And  
17 that was a dispute out of *Blue Shield* denying out-of-network or  
18 in-network charges when they got involved in Obamacare. And  
19 they just didn't keep anything straight and representations  
20 were made that doctors were in network but then they were  
21 charged as out of network or *Blue Shield* refused to pay.

22 And that, as well, included a significant injunctive  
23 program for which Judge Wiss requires follow-up by the  
24 attorneys. And we have a date to return or to submit that all  
25 requirements have been made.

1           And I will also tell you -- and partially I'm revealing  
2 this because of -- I understand that you have an issue with  
3 follow-up on what happens to class actions once they leave your  
4 courtroom. But the other reason is I just want you to know how  
5 deeply the firm -- and I'm sure every counsel in this room  
6 feels the same way -- but another case which I had which was  
7 improper taxation of cell phone use, I just want you to know  
8 that the firm, what we did, was we called every single --  
9 thousands of residents of the city of Chula Vista who had  
10 submitted to phishing claims to make sure that they knew  
11 exactly what they needed to do to fix them. We held town hall  
12 meetings in the community, and we also distributed flyers to  
13 every cell phone carrier store that would allow us to put them  
14 in about the settlement and encouraging people to comply.

15           So I just think that it's important and I respect your  
16 concern about follow-up and what's in the best interests of the  
17 class. And I just want you to know we're on board with that.

18           Lastly, I think -- the thing is I don't want to go over my  
19 allotted time -- but I think that -- I'm not sure if you're  
20 asking about individual input on the discussion as to whether  
21 discovery should be stayed, which I already commented on. I  
22 think that -- in a case of this magnitude, I do not think it  
23 would be inappropriate to have co-leads or even a small PSC.  
24 And I think that the case can be run efficiently without  
25 duplication and will assist in resolving the case in an

1 expeditious manner to protect the consumers.

2 **THE COURT:** Thank you very much.

3 **MS. BLATT:** Thank you.

4 **THE COURT:** Okay. So we listed you all in  
5 alphabetical order, I think.

6 Is it Ms. Doss? Ms. Doss next.

7 **MS. DOSS:** Good morning, Your Honor, and thank you.

8 This litigation may be one of the most consequential  
9 pieces of privacy litigation for this decade. This is really  
10 fundamentally different than the typical data breach matter.  
11 And for those reasons, I think it's really absolutely critical  
12 that the plaintiffs' lead representation include lawyers who  
13 have some significant background in cyber security and data  
14 privacy. And I'm very fortunate to have been given those  
15 opportunities and have some of that background.

16 This is a case I'm passionate about. I mean, we're  
17 talking about a defendant that has two billion users, half a  
18 trillion dollar market capitalization, and yet they failed to  
19 follow their own privacy policies.

20 **THE COURT:** Is there any argument -- this is not  
21 something I've thought carefully about, but is there any  
22 argument that the work you did on the Hill somehow creates some  
23 sort of conflict with the work that you're proposing to do  
24 here?

25 **MS. DOSS:** It's a great question. It's one that I've

1 talked with our ethics counsel at my firm about to be sure that  
2 there was no concern there. And I don't think so, and I'll  
3 tell you why.

4 Certainly, I was exposed to information from the Facebook  
5 and Cambridge Analytic defendants. However, I was representing  
6 the committee and all of my confidentiality obligations are to  
7 the committee. None of the information that was provided by  
8 the various witnesses to the investigation was provided under  
9 the scope of any kind of nondisclosure agreement as to  
10 committee personnel.

11 **THE COURT:** I was going to ask that. So you didn't  
12 review any information that was submitted pursuant to a  
13 protective order or some equivalent of a protective order that  
14 would not be accessible to the public?

15 **MS. DOSS:** No. Well, information -- certainly there  
16 was information which I imagine has not yet been provided to  
17 the public, but not pursuant to a protective order as such.

18 **THE COURT:** Classified information?

19 **MS. DOSS:** Yes, but none of that, of course, would  
20 come into play here. Because classified information I would  
21 protect in accordance with my ongoing obligations to protect  
22 classified information.

23 So I view my past work on the committee as being very  
24 similar to having been opposing counsel to the same defendant  
25 in other matters. You know, if I had been civil litigation

1 attorney sitting opposite Facebook counsel on some other  
2 matter, I would presumably in that context have received  
3 discovery information that gave me some contextual knowledge or  
4 awareness but would not be germane to the instant case unless  
5 and until that information was provided in discovery in the  
6 instant case.

7 **THE COURT:** What do you think is your best claim?

8 **MS. DOSS:** So, you know, that's a great question. I  
9 think the claims under the Federal Wiretap Act, the Stored  
10 Communications and Electronic -- the Stored Communications Act  
11 and Electronic Communications Privacy Act are important federal  
12 claims. But, you know, really, the traditional invasion of  
13 privacy and intrusion on seclusion and making public  
14 information that ought to be private are also very important  
15 claims here.

16 Because this is, again, so different from a typical data  
17 breach. This isn't just about credit card information or  
18 social security numbers. When people post things on Facebook,  
19 they've got photographs of their children that they think are  
20 only being seen by their family members. They've got the  
21 affinity groups they belong to. They've got the facts that  
22 they haven't liked or participated in pages related to  
23 substance abuse or related to suicide prevention or related to  
24 gender and sexuality issues. All kinds of things that they  
25 intended to keep private that were then shared outside the



1 terms of the privacy policy they understood the platform  
2 provided to them.

3 And although perhaps that information hasn't been made  
4 public in the sense of being published openly somewhere, it is  
5 certainly an invasion of privacy to have spread it broadly to  
6 third parties who had no right or other reason to access it.

7 So, again, I think this case is fundamentally different  
8 than a typical data breach matter.

9 **THE COURT:** Okay. Anything you want to briefly add to  
10 what you've submitted on paper? I have read everything  
11 carefully, but --

12 **MS. DOSS:** No. Thank you for that, Your Honor. And I  
13 would just say, you know, I really believe that the breadth and  
14 scope of my firm I think leads us to be well positioned to have  
15 a leadership role in this. I would certainly agree with some  
16 of my other, you know, counterparts here on the plaintiffs'  
17 side that I think a co-leadership or a leadership structure is  
18 absolutely appropriate in this case.

19 I would say that our firm, because our bread and butter  
20 work involves billing in six-minute increments, we are very  
21 accustomed to managing litigation costs. We work regularly for  
22 general counsel who go over our bills with a fine-tooth comb  
23 and are looking for cost savings and efficiencies. And we  
24 bring that, as well, of course, as a real willingness to work  
25 collaboratively with whomever might be appointed in this

1 matter.

2 **THE COURT:** Thank you.

3 **MS. DOSS:** Thank you.

4 **THE COURT:** Okay. Who's next? Mr. Friedman?

5 **MR. FRIEDMAN:** Good morning, Your Honor. Andrew  
6 Friedman again with Cohen Milstein Sellers & Toll.

7 I really don't have much to add to my submissions so I'll  
8 try to be brief.

9 I started with Cohen Milstein back in 1985. At the time  
10 we were an eight-person shop, and I was the junior associate  
11 there. We've grown into some call a class-action powerhouse.  
12 We have over 90 attorneys all across the country, but our main  
13 operation is in D.C. I'm extremely proud to have worked at the  
14 firm for 33 years. We do great work for class members, and we  
15 always have, and that's our commitment.

16 But Your Honor has singled out a number of excellent  
17 attorneys here. And they're all in this room. A lot of whom  
18 I've worked with before. Among them, Mr. Sobol of Lief  
19 Cabraser, Norm Siegel of Stueve Siegel, and several attorneys  
20 from the Keller Rohrbach firm.

21 I single out these firms, Your Honor, not because there  
22 aren't other excellent attorneys here -- and there are, make no  
23 mistake about that -- but I think this case has the potential  
24 to require a significant amount of resources from a firm or  
25 maybe several firms. A lot of the data breach cases --

1           **THE COURT:** On that point, I would like to ask you a  
2 little bit more about that. So we've now had three people come  
3 up and I think all three have suggested that maybe there ought  
4 to be co-lead counsel. A number of people suggested that in  
5 their applications.

6           Just how big of a discovery project is this going to be?  
7 And why can't -- why couldn't it -- why couldn't we expect it  
8 to be handled by one firm?

9           **MR. FRIEDMAN:** Your Honor, it could be handled by one  
10 firm. I think it would put a tremendous strain on just one  
11 firm.

12           The discovery process could be far reaching. We're  
13 talking about potentially adding a number of defendants. We're  
14 talking about discovery that could be taken on multiple  
15 continents. That puts a large strain on firms. So I think a  
16 co-lead counsel might be the way to go. It's obviously up to  
17 Your Honor. Or maybe a PSC. But --

18           **THE COURT:** So what's -- what would be the discovery  
19 plan? I mean, what would be your plan of attack for doing  
20 discovery in this case? What would you need to do?

21           **MR. FRIEDMAN:** I'm kind of belt and suspenders, so  
22 what I normally do is we start out, we do RFP's, we ask for  
23 documents, so we get a better idea what's going on and we don't  
24 go into depositions cold. We're able to review the documents,  
25 analyze them, and really go in, you know, on our feet rather

1 than reactionary.

2 **THE COURT:** But as you sit here today, do you have a  
3 sense of, you know, who you need to do discovery of, whose  
4 deposition you need to take, that sort of thing? Or is it just  
5 too early to know?

6 **MR. FRIEDMAN:** I'd say it's too early. I can  
7 speculate about 25 people I might want to take a deposition of.  
8 But I think it's premature at this point. Certainly, Cambridge  
9 Analytica and the individuals that created the program that  
10 caused this whole thing. There are certain individuals at  
11 Facebook. We'll learn a lot about that from the 26(a)  
12 disclosure. Who was involved. Defendants will provide that.  
13 We'll provide 26(a) disclosures to them. And that's a good way  
14 to start.

15 Your Honor --

16 **THE COURT:** Because, I guess, I -- you know,  
17 obviously, none of us know the ins and outs of the case yet  
18 other than maybe the folks at Facebook, or who represent  
19 Facebook. But at least at first glance it doesn't seem like --  
20 and, again, I'm comparing it just, for example, to my other  
21 MDL, right? involving Monsanto. Where that -- you understand  
22 why there's, you know, you need a bunch of lawyers on that  
23 case. There's a massive amount of discovery. Discovery is  
24 unique to each individual plaintiff.

25 Here, I mean, why isn't it more akin to, you know, like a

1 somewhat complex securities class action or something like that  
2 where, you know, the facts are somewhat confined and the amount  
3 of discovery you would do is somewhat confined?

4 **MR. FRIEDMAN:** That may be so, and I don't know yet,  
5 but that may be so within Facebook. We don't know where this  
6 is going to lead us, though. Basically, we're talking about in  
7 other terminology almost a conspiracy here. Conspiracy between  
8 Cambridge Analytica, those that led, it may go even beyond  
9 that.

10 So we're talking about really flying in the blind right  
11 now. People tend to say, I know what's there. We don't really  
12 know what's there until we roll up our sleeves and turn over  
13 rocks. And the more you turn over rocks the more you find out  
14 and the better you do for your class.

15 I can't predict what's going to happen here in terms of  
16 past cases. Obviously, some cases -- and there's been a slew  
17 of data breach cases and privacy cases -- that actually have  
18 settled at relatively early stage. I don't know that that's  
19 going to happen here, but I think whoever Your Honor chooses  
20 they have to be really prepared with the resources and the  
21 impetus to push this case.

22 Again, that may mean doing discovery all around the  
23 country, around the world. It may be -- it may be adding  
24 numerous defendants. Regardless, that's how you get the best  
25 result for your class. And that's, frankly, how we got the

1 best result for our class in the *Anthem* case.

2 On a related note, Your Honor, you asked us for a  
3 description of the core people in our group. I've laid that  
4 out in my submission, and they're all excellent attorneys. And  
5 I'm sure every group has excellent attorneys.

6 I just did want to turn your attention to two of those  
7 specifically. My partner Geoff Graber, and an associate, Julia  
8 Horowitz. Both of them are presently litigating what is a very  
9 relevant and almost related cyber attack case on behalf of the  
10 Democratic National Committee regarding the Russia and the  
11 WikiLeaks hack. In fact, yesterday CNN reported that it may,  
12 in fact, be that Russia has the Cambridge Analytical data that  
13 we're talking about here in this case.

14 Also as described in her bio, which is part of my  
15 submission, Ms. Horowitz is a published author on privacy  
16 matters. And she previously was an attorney before she joined  
17 our firm at the Electronic Privacy Information Center.

18 In conclusion, Your Honor, I think my experience really  
19 speaks to what is needed here. The track record that I've  
20 shown, and the resources of my firm, I think would really serve  
21 the class very well.

22 I'd be honored to represent the class in this very  
23 important case.

24 **THE COURT:** Thank you very much.

25 **MR. FRIEDMAN:** Thank you.

1           **THE COURT:** I had Mr. Kimpson next, but since you're  
2 up here, go ahead.

3           **MR. LOESER:** I guess I need to look at the list more  
4 carefully.

5           **THE COURT:** Go ahead. You're up here. Try to cut in  
6 line in front of Mr. Kimpson. Come on.

7           **MR. KIMPSON:** Thank you, Your Honor. My name is  
8 Marlon Kimpson. I'm a member at Motley Rice LLC in Charleston,  
9 South Carolina.

10           Your Honor, this is a big case. 85 million or more, at  
11 least, people whose privacy has been compromised. My firm has  
12 an international reputation for pioneering litigation all  
13 across the globe. We were the negotiators of one of the  
14 largest settlements in American jurisprudence, the tobacco  
15 settlement. We are currently financing an operation against  
16 global terrorism in the 911 cases. And we have unique -- the  
17 unique ability, whether MDL cases or class action cases, or  
18 securities cases, or the like, to resolve complex matters.

19           Most recently we were -- my partner, Joe Rice, was lead  
20 negotiator, although he was not the lead of the MDL in the  
21 *Volkswagon* case, he was one of the lead negotiators by which we  
22 worked with some very able lawyers, including lawyers in this  
23 courtroom.

24           Your Honor, I started out working as an associate at the  
25 firm. I clerked for a federal court judge, Judge Matthew

1 Perry. But I started out building asbestos cases and trying  
2 those cases in Mississippi, Kentucky, Alabama.

3 Then I transitioned into securities litigation whereby I  
4 represent a number of clients in securities class action cases  
5 under Rule 10(b) and the section of the securities exchange  
6 causes of action, Section 10, and other breach of fiduciary  
7 cases in the shareholder derivative context.

8 I've worked on merger and acquisition cases. The reason  
9 why I say that is because all of these cases we have  
10 voluminous, particularly the M & A cases, we have voluminous  
11 documents dumped on our firm. And we are a firm with over 90  
12 lawyers, 250 support staff, and we're able to get through that  
13 material and reduce it to information that we can readily use  
14 in the process of preparing for discovery and trial.

15 **THE COURT:** How do you have time to also be a state  
16 senator?

17 **MR. KIMPSON:** Your Honor, I got to eat.

18 **THE COURT:** Is it a part-time gig out there?

19 **MR. KIMPSON:** Yes, sir. Yes, sir, Your Honor. In  
20 South Carolina it's a part-time legislature.

21 **THE COURT:** So how often do you guys meet?

22 **MR. KIMPSON:** We are there -- the second week in  
23 January we start three days a week, and we adjourn the second  
24 week in May.

25 Now during the time I am in the legislature I work, I have



1 a place in Columbia, and Joe Rice doesn't allow me not to carry  
2 my load at the firm. But I'm out in May and I'm involved in  
3 some significant cases, most notably the *SCANA* case, which is a  
4 big debacle in South Carolina. And also we just settled the  
5 10(b) case of *Worldwide Acceptance*, which was a securities  
6 case, which was a good resolution for the class.

7 **THE COURT:** Could I ask you another question that's  
8 been on my mind about the bankruptcy?

9 **MR. KIMPSON:** Sure.

10 **THE COURT:** How do we deal with the fact that  
11 Cambridge Analytica is in bankruptcy? Where are they? Where  
12 is the bankruptcy?

13 **MR. KIMPSON:** That is in the bankruptcy court in New  
14 York, Judge Lane. Your Honor, we -- because of our experience,  
15 Motley Rice's experience, in bankruptcy courts most recently  
16 being appointed to the creditor's committee in *Takata*, we felt  
17 it appropriate to get someone over there and file a notice of  
18 appearance so that we could participate in the preliminary  
19 meeting, which was the 341 meeting whereby the trustee  
20 appointed, Sal Lamonica, had an opportunity to question the  
21 representative put up by Cambridge Analytica about the Chapter  
22 7 and the schedule of assets and liabilities.

23 We have transcribed notes from that Section 341 meeting  
24 and it led us to file some additional motions with the  
25 bankruptcy court. One, to -- similar to what the Court ordered

1 in this case with Lief Cabraser to subpoena or preserve  
2 documents. So we filed a motion in the bankruptcy court so  
3 that the debtors there, which were Cambridge Analytical and SCL  
4 and related entities to preserve documents.

5 In addition, we --

6 **THE COURT:** Let me ask you a question. So I know  
7 virtually nothing about bankruptcy matters.

8 How do we proceed in this case in light of the bankruptcy  
9 proceedings that are going on? I mean, there's this automatic  
10 stay that's in place, right? So what does that mean? How does  
11 that restrict us in the way that we can proceed in this case?

12 I mean, should the case be stayed as to Cambridge  
13 Analytica? Should -- should there be no discovery allowed as  
14 to Cambridge Analytica? If so, is there a manageable way to  
15 draw the line between discovery against Facebook and discovery  
16 against Cambridge Analytica? What's the plan for how to deal  
17 with that?

18 **MR. KIMPSON:** Your Honor, I must tell you I'm not a  
19 bankruptcy lawyer, either. We have engaged very able  
20 bankruptcy counsel, Michael Etkin of the Lowenstein Sandler  
21 firm.

22 But my limited understanding is that the bankruptcy  
23 against Cambridge Analytica, the fact that they filed for  
24 Chapter 7 will stay litigation in the MDL. And so we will have  
25 an opportunity, although it be limited, to represent the class

1 interest through our purported class representatives that we  
2 represent, Ms. Picha and Mr. Skotnicki, on the bankruptcy  
3 proceeding.

4 So it can be parallel with respect to -- you can have your  
5 proceedings here with respect to Facebook, but the discovery  
6 and the litigation will be stayed. There will be activity  
7 mainly with respect to examining the assets and liabilities of  
8 Cambridge Analytica and related entities in the bankruptcy  
9 courts.

10 Do they have money? What are their liabilities? Who are  
11 going to be their creditors? In the *Takata* case, my law  
12 partner, Kevin Dean, was able to successfully form a creditor's  
13 committee in the bankruptcy while the case proceeded against  
14 *Honda*. And so I think the bankruptcy courts offer a unique  
15 opportunity.

16 We have filed a notice of appearance and have actively  
17 participated in the bankruptcy courts. And whatever documents  
18 we may get in the bankruptcy court, we will do -- we will use  
19 the Rules of Civil Procedure so that we can use those documents  
20 to benefit the class if appropriate.

21 There were some questions in the bankruptcy court as to  
22 related entities created prior to the Chapter 7. We filed a  
23 motion for -- I believe it is a 2014 -- to conduct further  
24 discovery on that issue.

25 And so, Your Honor, I would just simply like to close by

1 saying we're one of the largest plaintiffs' firms in the  
2 country. We're uniquely located in Charleston, South Carolina,  
3 on the east coast, in the deep south. We believe that many of  
4 the people who had their data compromised live in the south for  
5 various reasons that Cambridge Analytica targeted and used for  
6 political purposes.

7 We stand eager and ready to assist this Court in whatever  
8 structure that the Court deems to create, and we'd like to be a  
9 part of the leadership in this case.

10 **THE COURT:** Thank you.

11 Okay, Mr. Loeser.

12 **MR. LOESER:** Your Honor, I appear to struggle with the  
13 alphabet, but I'm good at managing complex litigation.

14 First, Your Honor, I just want to thank you for including  
15 me on the list. I think you've put together an excellent group  
16 of attorneys with a lot of experience in these cases and I'm  
17 honored to be considered for this task.

18 This case involves a large corporation that put profits  
19 ahead of ethics, that took advantage of and violated the trust  
20 of its customers. And it's a front-page story with extremely  
21 high stakes for the company, with its regulators, with state  
22 and federal government. It is a congressional scandal.  
23 There's congressional testimony. The class is huge. The per  
24 consumer damage is complicated, but it's serious and wide  
25 ranging and it will require creative thought and expert

1 analysis.

2 If there's a settlement, the class is very large, and  
3 notice and administration will be complicated. It will require  
4 state-of-the-art technology and sophistication.

5 That should sound somewhat familiar; that's frankly how I  
6 view the *Wells Fargo* case. And I think Your Honor has a good  
7 measure of idea of how I would lead this case based on our  
8 experience in that case.

9 **THE COURT:** What's your view on co-lead counsel? I  
10 mean, if I were to appoint you lead counsel, or if I were  
11 inclined to point you lead counsel, would you say to me there  
12 really ought to be co-lead counsel here?

13 **MR. LOESER:** Your Honor --

14 **THE COURT:** And if so, why?

15 **MR. LOESER:** I think that, echoing some other thoughts  
16 that have been expressed, it is possible to manage this case  
17 with one firm. It needs to be a large firm with resources. I  
18 think we have that. I think in *Jabbari* we showed we can do  
19 that.

20 That said, a case like this, when you start out a case,  
21 it's unclear what's going to happen in this case, how many  
22 other defendants are going to be brought in, how much  
23 discovery. And I think you could probably see from the work in  
24 the *Jabbari* case that it involved a lot of attorneys at Keller  
25 Rohrbach to manage and handle that case solely on our own.

1           So really I don't think that there's a right way to do it  
2     or a wrong way. I think it comes down to management. So if  
3     Your Honor appoints co-lead counsel, it's very important that  
4     those co-leads can work together well, that perhaps have a  
5     track record of doing so where responsibility can be divided  
6     efficiently and effectively. You don't want to end up in a  
7     situation where you appoint more than one counsel and they just  
8     fight with each other how to manage litigation.

9           We are quite well known, as are many other firms on your  
10    list, for being able to work cooperatively. And frankly, it  
11    would be a significant burden to do this case with one firm.  
12    It's certainly possible, but I can see good reasons to make it  
13    more than one firm.

14          Your Honor did ask about discovery. And here I mean there  
15    could be many -- Facebook doesn't even know how many other  
16    third parties it shared or gave access to this data. I could  
17    see a small committee that's put together, a steering  
18    committee, a couple of firms that could be assigned particular  
19    responsibility in the event the case sort of mushrooms. I  
20    think that would be useful. But really it comes down to making  
21    sure that the person or people you put in charge have a record  
22    of managing litigation and making sure it doesn't spin out of  
23    control.

24          You know, this is very public work. And I think Your  
25    Honor saw in the *Jabbari* case, obviously in your other MDL

1 experience, there's a lot of people watching, there's a lot of  
2 critics, and it's important to operate knowing that everybody's  
3 watching. I don't think Your Honor would -- no one could look  
4 askance at appointing more than one firm. I think it is  
5 important not to create some sort of massive structure that's  
6 difficult to manage. But whether it's one firm or two firms  
7 that are in charge, and whether it's a couple of firms and a  
8 PSC, I think that's a sensible way to do it.

9 **THE COURT:** What about the idea -- obviously, there's  
10 more to discuss about staying discovery pending the motion to  
11 dismiss, but could you imagine a scenario where lead counsel  
12 from just one firm or one person is appointed as lead counsel  
13 during the initial phase, at least if discovery is stayed, to  
14 litigate the motion to dismiss and sort of revisit whether  
15 somebody needs to be brought -- somebody else needs to be  
16 brought on as co-lead after the motion to dismiss is  
17 adjudicated?

18 **MR. LOESER:** Yeah, I think that's a sensible approach.  
19 It's -- particularly if litigation ends up being stayed.  
20 Plaintiffs believe strongly that in a case like this it's  
21 important to start discovery immediately because it will allow  
22 you to fill out the contours of a complaint in terms of other  
23 parties that may get added. But if, in fact --

24 **THE COURT:** But you're not really supposed to do  
25 discovery to be able to discover claims that you might be able

1 to assert that you wouldn't be able to assert without the  
2 discovery.

3 **MR. LOESER:** Well, not -- well, cases do evolve with  
4 discovery.

5 **THE COURT:** They do, but they're not supposed to --  
6 we're not really supposed to be saying, Well, there might be  
7 other claims out there that we don't know about now so we  
8 should start discovery.

9 **MR. LOESER:** I'm less concerned about claims and more  
10 concerned about parties, Your Honor. I think that what's  
11 unknown in this case -- I mean, the list of claims is pretty  
12 long and pretty broad. And people, I think, have searched long  
13 and hard to come up with what are the strongest claims,  
14 certainly important to have a federal claim for reasons that  
15 have become clear in this circuit. But the list of parties, I  
16 think, is the unknown.

17 But I don't think it would be -- I don't think there be  
18 would be anything wrong with taking the approach that the group  
19 should start out small. It's very common in leadership orders  
20 for lead counsel to have the ability to bring in other counsel  
21 to assist. I think what's really important when you do that,  
22 to communicate with the court so it doesn't end up being a  
23 surprise later.

24 These cases sometimes -- there's a tremendous amount of  
25 work. Even the task of reviewing millions of pages of



1 documents. One firm can handle it, but it's a task that is  
2 often shared. And, again, if it's managed appropriately  
3 there's nothing wrong with taking that approach.

4 I would like to just note -- Your Honor asked for  
5 submission describing team members. And I really -- one of the  
6 things I'm most proud about with our work at Keller Rohrbach is  
7 we work in a collaborate team environment. On many cases, we  
8 bring together people that come in and out on a case based on  
9 particular expertise they may have.

10 And here -- and in *Jabbari* the success -- I mean, I'm not  
11 solely responsible by any stretch or means for that case. I  
12 had the assistance of my partners like Gretchen Cappio, among  
13 others, who really were instrumental in that case and very  
14 helpful particularly with complicated issues of experts and  
15 damages which I think as Your Honor's questions indicated  
16 that's very much an issue here. This case will require some  
17 thought, development of the law, on issues of standing, issues  
18 of damages. And if you consider what we did in *Jabbari* with  
19 the credit damage, that was a very novel claim, it's a very  
20 novel type of harm and approach to figure out how do you deal  
21 with that.

22 Here you're going to have that issue perhaps even on a  
23 grander scale because our world is very different now. Our  
24 information is housed by companies like Facebook. And when  
25 circumstances like this happen, that information goes out

1     there. And if you had tried to imagine something like this  
2     happening where private information is used to manipulate  
3     people in an election, I mean, that's a very bizarre,  
4     difficult-to-wrap-your-arms-around type of damage, but it's a  
5     very real harm. And so I think this case will require some  
6     real creative thought, some novel theories, and experts to help  
7     put that together. And I think, Your Honor, we've shown that  
8     we're capable of doing that type of work.

9             Other members of the team -- this is not -- I agree with  
10     other comments that have been made; this is not really a data  
11     breach case per se. Facebook wasn't hacked. It sold this  
12     information. And so there are -- we have significant data  
13     breach experience, but I do think that the type of litigation  
14     will be more along the lines of the *Jabbari* case.

15            That said, there's obviously important issues of data,  
16     data privacy, data security; and the work of Gretchen Cappio  
17     and also my partner Cari Laufenberg who we described in our  
18     pleadings and who is here with me today, both of them have had  
19     leadership roles and lead data breach cases. So to the extent  
20     we head down a pure data breach path, if there's issues of  
21     expertise that requires, the team at Keller Rohrbach certainly  
22     has that expertise.

23            Finally, I would add on the bankruptcy issue, that is an  
24     important issue and it is a difficult one. We've had many  
25     cases where one of the defendants, if not the primary

1 defendant, has sought bankruptcy court protection. And the --  
2 it's -- the statute can stop cases in its track. The  
3 bankruptcy stay can be a problem.

4 We've had a lot of success in negotiating relief from  
5 bankruptcy stays for the non-bankrupt defendants to be able to  
6 proceed on a class case. That's certainly what we would seek  
7 to do here. And we have bankruptcy experience both Mr. Sarko,  
8 the managing partner, and other partners at our firm who  
9 specialize in bankruptcy practice.

10 The other aspect of that is within the bankruptcy, class  
11 counsel can file a class claim and pursue the class claim in  
12 the bankruptcy itself. We've had cases like in the *Enron* case,  
13 for example, where we had parallel proceedings going on. We  
14 were pursuing *Enron* in the bankruptcy court itself, and then we  
15 had relief from stay to pursue other defendants and individual  
16 defendants and other companies. And that worked quite well.

17 It's a complicated process and it works well when the  
18 bankruptcy judge and the district court judge coordinate, but  
19 we have had experience in that and it can be a successful  
20 approach.

21 Your Honor, that's really all I have to say. I have  
22 managed a large number of cases. I've been fortunate to  
23 represent governments and class members and consumers and  
24 retirees. And I would say that overall, the guiding principle  
25 needs to be what serves the best interests of the class.

1 Because as I said, there's a lot of people watching and there's  
2 a lot of critics. It's extremely important to be above board,  
3 up front in the Court. Here's a case where we'll need to  
4 advance the law; but my commitment to the Court is to always be  
5 up front, always be transparent, and not to, you know,  
6 embarrass the Court in any way. So --

7 **THE COURT:** That's not entirely in your control,  
8 unfortunately. Okay. Great. Thank you.

9 Let's see. Who's next here. Ms. Rivas.

10 **MS. RIVAS:** Good morning, Your Honor. Rosemary Rivas  
11 of Levi Korsinsky. I started out litigating consumer class  
12 action cases 18 years ago. That was my first case. I hope  
13 when I retire in 20 years that that's my last case. I think  
14 that class actions are important vehicles for the vindication  
15 of consumer rights. I enjoy my work in that aspect, and I'm  
16 very honored that the Court considered me as a finalist.

17 I started out working in data privacy cases about ten  
18 years ago.

19 **THE COURT:** I saw that you worked on this *Lily versus*  
20 *Jamba Juice* case. Was that the case -- was that Judge Tigar's  
21 case that resulted in a Ninth Circuit ruling on  
22 ascertainability? Or am I mixing that up with a different  
23 case?

24 **MS. RIVAS:** You're mixing that up, Your Honor. That  
25 was -- Judge Tigar certified an issues class for liability, and

1 we ultimately resolved the case for injunctive relief. And  
2 that did not go up on appeal.

3 I worked on one of the very first cases about Article III  
4 standing. The *Ruiz v. Gap* case that went up to the Ninth  
5 Circuit. And there we argued that an increased risk of  
6 identity theft sufficed for Article III standing.

7 **THE COURT:** Is there an increased risk of identity  
8 theft in this case?

9 **MS. RIVAS:** No.

10 **THE COURT:** I mean, it sort of brings me back to the  
11 question, the initial question I asked, about standing, right?  
12 I mean, let me give you a real world -- it's not a hypothetical  
13 because it's something that actually happens to me sometimes,  
14 right?

15 Like I'm on ESPN and I'm reading about the 49ers. And all  
16 of a sudden they figure out that I keep going to the 49ers and  
17 so these ads pop up for Jimmy Garoppolo jerseys, right? for me  
18 to buy. So they've collected information about me, about my  
19 preferences, and they have subjected me to propaganda about  
20 Jimmy Garoppolo jerseys.

21 How have I been injured by that? And if I haven't been  
22 injured by that, how is the -- how is this case different from  
23 that?

24 **MS. RIVAS:** So, Your Honor, I wouldn't rule out that  
25 there's no increase of identity theft here. I don't think we

1 know the whole scope of the type of data that's been collected.  
2 I know there's likes, information about people's religious  
3 views, political views, people who were friends of those people  
4 who agreed to the participate in the This-Is-Your-Digital-Life  
5 app. But that information is still, in my view, protected by  
6 the right of privacy. And the fact that that information, in  
7 my view, was stolen and used for improper purposes, that's an  
8 injury.

9 There's also an issue of whether --

10 **THE COURT:** But how would you -- how would you  
11 articulate the injury? How would you describe the injury?

12 **MS. RIVAS:** Well, there's two. There's a violation of  
13 statutory rights. That's an injury. I don't think there's  
14 *Spokeo* issues here. And then there's the right of privacy in  
15 your information that is out there.

16 My understanding is that Facebook doesn't know if  
17 Cambridge Analytica, or whoever it is, still has that  
18 information. I think consumers have an interest in making sure  
19 that that information isn't in the wrong hands and isn't used  
20 for nefarious purposes.

21 My understanding is that some apps -- or, some  
22 corporations have information and phone numbers and that they  
23 use Facebook to match people up based on phone numbers that  
24 they have.

25 So I think there's definitely an injury. I think there's

1 an irreparable harm, an ongoing harm, in terms of an invasion  
2 of privacy. And I think, again, that the violations of the  
3 consumer statutes here such as the Stored Communications Act,  
4 and I think there's been an unauthorized disclosure -- or,  
5 unauthorized access of stored information. I think that those  
6 provide the standing that's necessary.

7 I wanted to answer some of your other questions. I don't  
8 think a stay is appropriate. I was recently appointed co-lead  
9 counsel by Judge Simon in the District of Oregon in the *Intel*  
10 case. He is allowing us to proceed with certain discovery and  
11 we're negotiating that with the defendant.

12 **THE COURT:** So in that case -- and I don't know  
13 anything about that case -- but it wasn't a situation where the  
14 discovery floodgates were opened. There was sort of  
15 consideration about what sort of limited discovery might be  
16 appropriate while a motion to dismiss was still pending?

17 **MS. RIVAS:** Exactly, Your Honor. He gave us some very  
18 thoughtful comments on what he believed was necessary, and  
19 where we're considering that and possibly other areas. But  
20 with the goal of it not being full blown open until after the  
21 motion --

22 My understanding in the *Vizio* case, which is in front of  
23 Judge Stanton in the Central District, she also denied a motion  
24 to stay discovery pending a resolution of the motion to  
25 dismiss.

1 In terms of the bankruptcy proceedings, Your Honor, I  
2 profess that I'm not an expert in bankruptcy proceedings, but I  
3 do have a little bit of knowledge on it. I think that once  
4 interim counsel is appointed they can discuss -- or, reach out  
5 to the trustee who's responsible for that, those bankruptcy  
6 proceedings. I think the litigation against Facebook can go  
7 forward.

8 My firm has offices in New York and Connecticut and  
9 Washington D.C., so we have attorneys who will be able to  
10 participate in those bankruptcy proceedings. I would tell the  
11 Court that if appointed lead counsel, I would most likely hire  
12 someone who has experience in bankruptcy proceedings or even  
13 look to some of the law firms here for some guidance on that.

14 And in terms of the lead counsel structure, Your Honor, my  
15 firm is completely capable of managing the litigation, of  
16 making decisions; however, we would not want to be hamstrung,  
17 so to speak, in terms of bringing other lawyers on to the  
18 extent that we need assistance with some of the discovery. I'm  
19 not opposed to a two co-lead structure or a PSC given, Your  
20 Honor, that there are the potential for multiple defendants in  
21 this case. My understanding is that there are hundreds of  
22 other third-party applications that have data and those  
23 companies may be brought in as defendants, as well.

24 The last point I would like to make is in terms of my  
25 team. My partner, Joel Levi, actually has two engineering



1 degrees. He's worked on developing software. And I think he  
2 would be crucial in this case in terms of the digital forensic  
3 evidence in terms of determining is that information still out  
4 there? Who has it? Is it -- has it been deleted?

5 And unless the Court has any other questions, that's all I  
6 have.

7 **THE COURT:** Great. Thank you.

8 **MS. RIVAS:** Thank you.

9 **MR. SIEGEL:** Good morning, Your Honor. Norman Siegel,  
10 Stueve Siegel Hanson, for plaintiff O'Kelly.

11 I think there's two concepts that have percolated up  
12 through the discussion this morning about the appointment of  
13 lead counsel. I think on the one hand the Court, if you look  
14 at Rule 23, if you look at the manual of complex litigation,  
15 looks to counsel that has the substantive experience on the  
16 issues before the Court.

17 So let me just start with that, and that was obviously the  
18 bulk of our submission.

19 In this kind of case where you are vetting a lot of  
20 plaintiffs, figuring out how to plead very important privacy  
21 claims, the technical experts you need, those are all things  
22 that we've been fortunate enough to do. It's, basically -- not  
23 all, but nearly all I've been doing over the last five years  
24 beginning with the Target data breach litigation, through the  
25 *Home Depot* and *Equifax* cases where I was appointed lead

1 counsel, and also working closely with the lead counsel in  
2 *Anthem, Office of Personnel Management*, and others.

3 So in terms of just that substantive experience, I think  
4 we checked those boxes.

5 **THE COURT:** Can I ask you a question?

6 **MR. SIEGEL:** Please.

7 **THE COURT:** You mentioned figuring out how to plead  
8 important privacy cases or important privacy claims. And, you  
9 know, if you collect all of the claims that have been asserted  
10 in each of the individual cases that are now part of this MDL,  
11 there's like what? 70 of them or something like that?

12 **MR. SIEGEL:** There's quite a few. I think we list --  
13 there are scores of them, yes.

14 **THE COURT:** So how does one -- so if you're appointed  
15 lead counsel, how do you -- and you need to file a consolidated  
16 complaint, how do you -- how do you figure out which claims to  
17 assert and which claims to, you know, place emphasis on?

18 I mean, I guess let me back up and ask a more simple  
19 question and perhaps an ignorant question. But do you include  
20 all of the claims that every plaintiff has asserted in every  
21 case? And sort of decide which ones to emphasize in the  
22 consolidated complaint? Or do you have the ability as lead  
23 counsel in an MDL to say, you know what? Half of these claims  
24 are not appropriate to assert --

25 **MR. SIEGEL:** Right.

1           **THE COURT:** -- and so I'm only going to assert 30  
2 claims here instead of 70 claims or whatever.

3           **MR. SIEGEL:** Right. I think the response is part  
4 technical, part just how -- efficiency. On the technical point  
5 I think it's a question of whether it's truly a superseding  
6 consolidated amended complaint. And in that instance, it would  
7 take the place of all those prior complaints. So you own those  
8 -- you own the superseding consolidated amended complaint.

9           The trend, in my experience, is that lead counsel  
10 identifies the better claims -- which still may be numerous --  
11 and pleads those claims. Those other claims are still there.

12           **THE COURT:** So the other claims are not in this new  
13 complaint.

14           **MR. SIEGEL:** You don't have a kitchen sink --

15           **THE COURT:** But the new complaint does not supersede  
16 the claims in the other -- in the individual complaints. Those  
17 ones are just sort of put to the sideline and we figure out how  
18 to sort those out later?

19           **MR. SIEGEL:** Exactly. That complaint becomes the  
20 operative complaint in the MDL. So all of the parties know  
21 what they're dealing with.

22           I think it's lead counsel's job to sift through at least  
23 -- let me tell you what our approach would be, and not  
24 promising any numerical cap. But I do think it's incumbent on  
25 lead counsel to identify the better claims and jettison those

1 that are not as good.

2 The whole point here, I think, is to point a path forward  
3 that's most efficient for the Court and the parties. And  
4 prioritizing claims is certainly an important initial step in  
5 that regard.

6 And just a couple more points on the substantive point  
7 you've raised to several of my colleagues here, the concept of  
8 standing.

9 I think I argued the last standing case in a privacy case  
10 in an appellate court in front of the Fourth Circuit in  
11 *Haughton versus the National Board of Examiners in Optometry*.  
12 So we've checked that box. And, Your Honor, I've also tried a  
13 class action trial, which is sort of a rare thing these days.  
14 And we're a long way from trying this case; but again, in terms  
15 of contemplation of the merits of lead counsel under a strict  
16 Rule 23(g), how do they fit in with the potential needs of the  
17 case, I think I, my colleagues that I've identified in our  
18 supplemental submission, checked those boxes.

19 Then there's the separate issue that a couple folks that  
20 talked about -- Mr. Loeser perhaps most in-depth --

21 **THE COURT:** By the way, did you win that Fourth  
22 Circuit case?

23 **MR. SIEGEL:** I won and got the trial court reversed.

24 **THE COURT:** What was that case?

25 **MR. SIEGEL:** This is *Haughton versus National Board of*

1 *Examiners in Optometry*. And this is an --

2 **THE COURT:** There was another Fourth Circuit case that  
3 came out badly for you -- for your side -- on standing. I  
4 think *Beck versus McDonald* or something like that. Am I  
5 mis-remembering that?

6 **MR. SIEGEL:** What's the case name?

7 **THE COURT:** *Beck versus McDonald*.

8 **MR. SIEGEL:** Predated our case. So if you look at  
9 *Haughton*, we dealt with *Beck*. They stepped back from *Beck*.  
10 They kind of navigated around it. But the trial court  
11 dismissed it based on *Beck*, and we just won a reversal. The  
12 decision came out in June, a month ago.

13 So we've been on the front lines of that very specific  
14 issue. And, look, I think everybody on both sides, if they  
15 were being honest here -- as we all should be -- this is an  
16 evolving issue, right? It's not something that is set in stone  
17 that you can go look at the constellation of cases out there  
18 and say, Ah, yes, this is the way the case will come out on the  
19 standing issue on this particular claim. Even going back to  
20 *Spokeo*, you have a concurrence from Justice Thomas that talks  
21 about a privacy right. And wait a minute, those are the kinds  
22 of rights that perhaps should be treated differently because  
23 they were treated differently at common law.

24 So I think -- I think -- the question's the right  
25 question. I think we're a long way away from being able to

1 give an answer -- that anybody in this room on either side  
2 could give you with some definitive certainty and cite a case  
3 based on the facts that we know so far.

4 So the second piece of what I wanted to talk about was the  
5 case management piece. Because I do think you have nearly all  
6 of the folks that have preceded me talk about that; how many  
7 lawyers should the structure be.

8 This is very, very judge-preference driven, in my view. I  
9 think our job, whether it's one or two, or two leads and a  
10 small PSC, our job, again -- same thing with your question on  
11 what this complaint looks like -- it's to zealously represent  
12 our clients as efficiently as possible consistent with Rule 1;  
13 that we deal with the defense counsel to prioritize the issues  
14 that can move the case forward; that we resolve issues where we  
15 can and don't bring to the Court at every moment issues that  
16 counsel really should be able to resolve on their own so we can  
17 get these critical issues before the Court in the most  
18 efficient way possible for both sides.

19 And so that -- in terms of skill set? When Judge Thrash  
20 appointed me as lead counsel in *Home Depo*, and some colleagues,  
21 we were able to very efficiently bring that case to final  
22 resolution within a year after appointment. Just by  
23 happenstance, *Equifax* went back to Judge Thrash, completely  
24 different case. *Equifax* is also located in Atlanta. And Judge  
25 Thrash got that case. We had about 330 complaints on file.

1 There was 100 applicants, not 30, for lead counsel. And Judge  
2 Thrash, with serious competition from many quality lawyers,  
3 appointed me and some of my colleagues as lead in that case.

4 And I think -- did we get a good result for the class?

5 Yes. Were we able to efficiently run a case that had  
6 40 million class members? Yes. And I think -- I don't know  
7 this, but I suspect the efficiency and the case management  
8 techniques we were able to bring to bear in *Home Depot* is  
9 probably a significant reason why Judge Thrash selected me  
10 in -- when I came back in *Equifax*. Because, again, I do think  
11 as far as the court is concerned, you want an efficiently-run  
12 case where we are bringing these issues to a head as quickly as  
13 we can.

14 So we put this in our supplement. The size of the  
15 structure doesn't matter. I think whether it's me or whomever  
16 else you choose, lead counsel should have that skill set to  
17 manage and should have the ability, be empowered to identify  
18 other lawyers when needed when the case demands it to go say,  
19 Oh, Ms. Doss, you have a very specific experience. To the  
20 extent you can talk about it, we'd like to navigate this issue.  
21 We heard from Ms. Wolfson who can speak Russian. Maybe that's  
22 an important skill set. But lead counsel should have the  
23 ability to look to the folks in this room and others that are  
24 known to be leaders in this field.

25 And that's just a final point I want to make. I've been

1 litigating these cases now for over five years. I know nearly  
2 all these folks and have worked with them and many others and  
3 they're all outstanding lawyers in this field. We need the  
4 ability to call on their skill sets when the case demands it.  
5 And again, everybody doesn't need to be in a big structure;  
6 it's the ability with the Court's permission to include folks  
7 where needed.

8 Thank you, Your Honor.

9 **THE COURT:** Thank you.

10 **MR. SIEGEL:** I had one final point. It will be very  
11 quick.

12 **THE COURT:** Sure.

13 **MR. SIEGEL:** You asked about these other issues and  
14 how we could approach them, whether there were any additions.  
15 My only comment is, a suggestion, is that it wait until the  
16 appointment of lead counsel, for example. It seems to me -- I  
17 think there were competing proposals about when a consolidated  
18 amended complaint would be filed, either 45 or 60 days after.  
19 It seems to me that after appointment, the lead counsel and  
20 counsel for Facebook can get together and probably all those  
21 issues you identified can be resolved probably within a week.

22 So that was my only suggestion rather than try to grapple  
23 with it here.

24 **THE COURT:** I think that's a good point. It's  
25 worthwhile having a preliminary discussion about some of that



1 stuff. But well taken. Thank you.

2 **MR. SIEGEL:** Thank you, Your Honor.

3 **THE COURT:** Mr. Sobol.

4 **MR. SOBOL:** Good morning, Your Honor.

5 Your Honor, I lead my firm's efforts to protect consumers'  
6 privacy and defend their rights to basic cyber security. My  
7 submissions, including yesterday's, describe my years of  
8 experience in this district prosecuting privacy and consumer  
9 class actions and successfully resolving litigation  
10 efficiently.

11 I am based in the Northern District. My firm was founded  
12 here over 40 years ago and a significant part of my practice  
13 takes place every day through this court.

14 I am fortunate to work with talented and committed,  
15 diverse group of lawyers at Lieff Cabraser, many of whom are  
16 here in the back rows sitting with me, on privacy issues every  
17 day, the highest levels of professional standards. We are well  
18 respected by courts, by our colleagues, and our adversaries.  
19 This is reflected in our submissions of the support we received  
20 from the plaintiffs' group, all of whom are among best lawyers  
21 in the country who have dedicated their practice to protecting  
22 consumers.

23 Facebook also is represented by excellent counsel who will  
24 no doubt zealously and thoughtfully defend their client, as  
25 they should. And we will all need to work together, working

1 hard, respectfully, towards one another and collaborating  
2 wherever possible as we have, in fact, done already amongst the  
3 plaintiffs in submitting a joint CMC statement. And, in fact,  
4 in reaching agreement with Facebook on a proposed initial  
5 schedule.

6 It wasn't clear to me in your opening comments whether the  
7 Court appreciated that, but the plaintiffs' statement actually  
8 is a result of a negotiation already with the defendants about  
9 a proposed schedule.

10 **THE COURT:** Oh, I thought -- no, I didn't realize  
11 that. Thank you. I thought there was some disagreement from  
12 the plaintiffs about when a consolidated complaint should be  
13 filed and that, therefore, there would be disagreement about  
14 the schedule by which it would be -- a motion to dismiss would  
15 be adjudicated.

16 **MR. SOBOL:** We resolved that disagreement by talking  
17 with the defendants and proposing in our statement where -- it  
18 may not be clear because it's in our statement, not a joint  
19 statement -- but we preface it by noting that we now have an  
20 agreed-upon schedule and it's set forth in the plaintiffs' case  
21 management statement.

22 **THE COURT:** Oh, okay. Okay.

23 **MR. SOBOL:** Yeah.

24 **THE COURT:** Oh, good.

25 **MR. SOBOL:** Your Honor, this is going to be a very

1 demanding case. It's a very important case. There's no  
2 question about it. And you know the way plaintiffs' counsel  
3 work and I think demands of this case are going to require more  
4 than one firm. It can be -- I echo everything that my  
5 colleagues have said about that. I won't repeat it here.

6 I'll say that, you know, I have worked closely with many  
7 of the lawyers in the room, many of them who have taken the  
8 podium earlier today and will take the podium later on,  
9 effectively as co-lead counsel.

10 Ms. Wolfson and I have worked together on consumer  
11 matters. I've worked with Keller Rohrbach, in fact, on a  
12 privacy matter involving the *Sony Pictures Entertainment*,  
13 including with Ms. Laufenberg who's here today and Lynn Sarko.  
14 I'm co-counsel, lead counsel, with Mr. Sarko in a case pending  
15 in the District of Arizona against *Theranos*, which is a Silicon  
16 Valley startup company you may have heard of.

17 So, you know, the important thing really is whether or not  
18 we can effectively manage the case according to the needs of  
19 the case. And there are times when you need all hands on deck.  
20 There are times when you need direction from just a couple of  
21 lawyers. I think the class would be benefited by the group of  
22 -- by a small group of lawyers, or at least co-lead counsel,  
23 with varied experience. Two heads are better than one  
24 sometimes. These are difficult, complex issues. The data --  
25 the technical aspects will be very challenging. The damages

1 theories will be difficult and will need a lot of creative  
2 thought. And putting heads together on that is going to be  
3 very important.

4 Your Honor, I'd like to highlight three aspects of my  
5 experience which I think makes me uniquely qualified to run the  
6 litigation for the plaintiffs.

7 Among the many several privacy cases I have litigated to a  
8 successful conclusion includes one against Facebook. I have  
9 investigated deeply into Facebook's stated public policies,  
10 their actual practices, and the operation on a technical level  
11 including down to their source code. I'm very familiar with  
12 certain aspects of how Facebook processes users' information  
13 and converts it for commercial gain.

14 In our settlement, Facebook was forced to acknowledge the  
15 practices revealed only by intensive technical discovery. We  
16 confirmed an end to those practices, some of which are still  
17 ongoing. And we added transparency with new plain English  
18 disclosures. As Chief District Judge Hamilton acknowledged,  
19 almost all the relief available to the class was obtained, and  
20 almost no other case she had seen in 17 years was litigated as  
21 extensively pre-settlement. That experience gained in  
22 litigation will certainly inform and improve any proceedings  
23 here.

24 I have litigated other data privacy cases involving the  
25 intentional harvesting of users' private data similar to the

1 conduct that engaged in by -- alleged conduct engaged in by  
2 Facebook here. Includes the interception of the contents of  
3 consumers' private electronic communications, the tracking of  
4 children's geo-location and their online activities, and a near  
5 constant and surreptitious surveillance of some consumers who  
6 take extra efforts to keep their affairs private but are  
7 thwarted anyways. This experience will be invaluable, I think,  
8 in contributing to understanding the magnitude of the harm here  
9 and in being able to fashion a reasonable remedy to address it.

10 You know, I'd like to sort of -- I want to address a  
11 couple of the issues that you raise but I want -- I do want to  
12 sort of emphasize as a way of closing; and that is that we at  
13 Lieff Cabraser believe these cases are tremendously important  
14 to our society in ways that are big and small, personal and  
15 political, and seen and unseen. The development of digital  
16 technology that has exponentially propelled incursions into  
17 Americans' private lives is very new and we're struggling with  
18 how to deal with it. But the recognition in society of the  
19 importance of privacy is actually very old.

20 The cases here -- this case, I believe -- will shape  
21 privacy on the internet and the precedent that Your Honor will  
22 set will guide corporations in the years to come. I think it's  
23 important litigation that can preserve our long-held cultural  
24 values while technology inexorably moves forward.

25 As lead counsel, I and my team at Lieff Cabraser can offer

1 not only our significant resources and our expertise in  
2 resolving complex class actions, including privacy class  
3 actions, but also our commitment to preserving and vindicating  
4 the rights to privacy and autonomy.

5 Your Honor, I don't believe a stay of discovery is  
6 appropriate here. Our case management statement lays out  
7 something very contrary to that. We're asking for initial  
8 disclosures that are -- go beyond, frankly, what might usually  
9 be requested. And there's a good reason for that.

10 And the reason is that we -- the incursion of privacy here  
11 needs to be nipped in the bud and we need to maintain the  
12 status quo of the privacy. We need to figure out the extent of  
13 the harm right away. And that's what those initial disclosures  
14 request.

15 We need to know what has been done and the scope of the  
16 problem. The reason why we need to know it is because we have  
17 this sort of drip-drip in the public record of --

18 **THE COURT:** Can I just ask you? I'm looking at your  
19 four categories of information you identified in the case  
20 management statement.

21 **MR. SOBOL:** Yes.

22 **THE COURT:** Is the idea that that is the discovery  
23 that would happen before motions to dismiss are adjudicated?  
24 The discovery would be limited to that until the motions to  
25 dismiss are adjudicated?

1           **MR. SOBOL:** That is not exactly the collective  
2 plaintiffs' proposal. The collective plaintiffs' proposal is  
3 that discovery for all purposes would commence upon the filing  
4 of the amended complaint. If I'm speaking -- not what is laid  
5 out there, but I think that those four categories of  
6 information, if we were able to get that prior to an  
7 adjudication of a motion to dismiss, I think that's a  
8 reasonable compromise to a discovery stay.

9           That information is very central. It includes, of  
10 course -- as you have in front of you -- includes, of course,  
11 the investigations and audits that Facebook says that it's  
12 undertaken and will give us a sense of what the scope of the  
13 issue is here. So I think it's so central and so crucial to  
14 protect consumers and to make sure that we understand what the  
15 status quo is that that would be a good way to proceed.

16           There is -- there are a couple of entities in bankruptcy  
17 here, Your Honor, but I don't think -- you know, bankruptcy --  
18 none of us who practice in bankruptcy regularly particularly  
19 like it or are somewhat fearful of it. But I think --

20           **THE COURT:** Certainly my feeling.

21           **MR. SOBOL:** We've retained a bankruptcy counsel. He's  
22 someone who's worked with us in complex litigation before and  
23 MDL litigation. In particular, I'm thinking of the *General*  
24 *Motors*, the GM ignition case where you're really proceeding  
25 against a bankrupt entity which is just -- who's going through

1 a reorganization.

2 Here we have a liquidation of a rather small entity. And  
3 the crucial aspect is to make sure that the evidence doesn't go  
4 anywhere. I don't think it's realistic to think that Cambridge  
5 Analytica is going to be -- other than through, I think,  
6 mandatory injunctive relief -- really providing much of a  
7 remedy to these -- to this class.

8 And so, obviously, before the automatic stay took place we  
9 sought to get and secure a commitment for them to maintain  
10 evidence. Because that's really the most important thing that  
11 we have from them. But we do have an appearance on file  
12 through our retained bankruptcy lawyer and we're monitoring  
13 that.

14 But in terms of proceeding here technically, we cannot  
15 technically, and literally, we cannot proceed, of course,  
16 against the bankrupt entity at this time. And if we need -- if  
17 it turns out that whomever you appoint as lead counsel and  
18 their consultants determine that it's worth proceeding against  
19 those defendant entities in bankruptcy, then the thing to do is  
20 to get a relief from stay and be able to pursue it.

21 I wouldn't complicate these proceedings by pursuing that  
22 claim in bankruptcy. That would be inefficient. The core  
23 discovery and the core issues are all going to resolve out of  
24 Menlo Park and Palo Alto predominantly, and we don't need to  
25 involve the bankruptcy court other than getting permission if



1 indeed we do end up proceeding against those defendants.

2 If there's any other questions Your Honor has. Otherwise,  
3 I appreciate the opportunity to address the Court and thank you  
4 for the opportunity to potentially represent this class in this  
5 very important case.

6 Thank you, Your Honor.

7 **THE COURT:** Great. Thank you. We have two people  
8 left. Ms. Weaver and Ms. Wolfson. And after that we'll take a  
9 break because I know we've been going for awhile.

10 **MS. WEAVER:** Good morning, Your Honor. Leslie Weaver  
11 of Bleichmar Fonti and Auld.

12 I had five points in five minutes prepared, but it's more  
13 like seven points in hopefully seven minutes given your  
14 questions.

15 These are the things I was hoping to address. One, why  
16 isn't this a securities case? Two, what's our best claim? I'd  
17 like to respond to your ESPN surfing question. Three --

18 **THE COURT:** I have a question for you. Why do you  
19 have a picture of a bull on your law firm --

20 **MS. WEAVER:** That's a bull market.

21 **THE COURT:** Bull market?

22 **MS. WEAVER:** I guess so. It's advertising, I guess.  
23 There should be a little girl standing next to it, probably, if  
24 you've been to Wall Street lately.

25 In any event, best claim, structure, how do you construct

1 a comprehensive pleading, bankruptcy, and case management.

2 So why isn't this a securities case? The arc of the law  
3 that has developed, and primarily in the Northern District on  
4 this specific issue, really starting with *LinkedIn* in front of  
5 Judge Koh in *Low v. LinkedIn*. Subsequently, *Facebook*, which  
6 Judge Davila had. This is not a data breach case as has been  
7 pointed out to you. It has to do with data that's being  
8 collected by people who are working in a safe environment.

9 So if you look, for example, at paragraph 23 of our  
10 complaint, Facebook's data use policy promised: We don't share  
11 information we receive about you with others unless we have  
12 received your permission and give you notice.

13 So you didn't get a warning like that when you were  
14 surfing on the ESPN site. That's exactly the claim that I  
15 tried against Positive Singles in 2014 before Judge Carrie  
16 Zepeda. They made specific promises to people working in a  
17 closed environment about what would be done with their data.  
18 So it's not somebody dumpster driving and collecting  
19 information about you when you're in a forum where you have no  
20 real expectation of privacy.

21 The claim we pled that nobody else has pled, other than a  
22 case that Judge Koh subsequently had called *Fraley v. Facebook*,  
23 is civil -- California Civil Code, Section 3344. That's  
24 misappropriation of identity. It's an interesting concept. It  
25 would admittedly be novel. But the elements are, you know, the

1 use of the identity, the appropriation of that identity to the  
2 defendants' advantage, commercially or otherwise, lack of  
3 consent, and resulting injury.

4 You want to know about the injury. Well, in that case  
5 Judge Koh specifically held -- this is 830 F.Supp. 2d 785 at  
6 799 -- the plaintiffs had concrete, proveable valuable in the  
7 economy at large and that could be measured by the additional  
8 profits that Facebook earned.

9 So in that context we didn't plead a case just about  
10 Cambridge Analytica. And that's your next question, is the  
11 structure of this case. This isn't about one app. It's about  
12 200. And if you read through the testimony that Mr. Zuckerberg  
13 gave and all of the subsequent investigations, we believe -- as  
14 Mr. Sobol just said -- that very first category of information  
15 that should be disclosed immediately is critical. How many  
16 apps have this information and what is scope of it? And that's  
17 probably -- I think we know, it's already in the record, but  
18 this case is much larger than Cambridge Analytica.

19 Going then to the next point, Your Honor. Forgive me  
20 here. The conversation that we've had today is one of the  
21 things that I love best about working in the plaintiffs' bar.  
22 This collaborative structure. And to come back to that first  
23 question why isn't this a securities case? Because it's not a  
24 10(b). Those are easy cases. I mean, not that you always win  
25 them, but it's very clear what the standard is. Is there

1 falsity? Is there *scienter*? Is there damage? Did the stock  
2 move?

3 Here you have -- and I believe you asked the question --  
4 in our case management statement we identified 37 causes of  
5 actions pled in 41 complaints. And that tells you that  
6 everybody quite can't get their fingers on it.

7 And the collaborative discussion that we're having here is  
8 why I like working in the plaintiffs' bar and it's why we need  
9 the resources on the plaintiffs' side to really think about  
10 this. It's not to say that one firm can't do it, I think my  
11 firm could, but I think having input really does help. And in  
12 4, page 3, of my initial submission we cite that Harvard Law  
13 Review that all the Silicon Valley companies are discussing  
14 which is the value in diversity in collaborative contexts. And  
15 there is -- approaching this as a strict data breach case is  
16 probably not the way to go. And I'd like you to consider also  
17 the defendants' resources here.

18 If you look at just investigations launched in the United  
19 States, it's the FTC, the SEC, the FBI, the DOJ, HUD, and the  
20 state attorneys general. Those are the ones that we know  
21 about. International investigations --

22 **THE COURT:** What's HUD investigation?

23 **MS. WEAVER:** Discrimination in the collection of  
24 information that was then used by companies in determining  
25 where they were going to allow loans. So it's the collection

1 -- it's the penumbra of this collection of information that is  
2 so great and can be --

3 **THE COURT:** I thought you were saying they were  
4 investigating Facebook.

5 **MS. WEAVER:** They are, Your Honor.

6 **THE COURT:** They are?

7 **MS. WEAVER:** They are. In fact, I can tell you -- the  
8 Department of Housing and Urban Development reopened its  
9 investigation in April into whether Facebook violated the Fair  
10 Housing Act by allowing ads that discriminate against protected  
11 classes.

12 So Facebook has law firms, upon law firms, upon law firms.  
13 And I know because I saw it in *Clean Diesel*. And as Judge  
14 Breyer famously said in *Clean Diesel*: This isn't a whodunnit.  
15 It's not. But the problem, as in *Clean Diesel*, is the fix.  
16 And it's the remedy for the harm that has already been a  
17 incurred.

18 So there's a similarity. How do we clean up the  
19 environment for what has occurred? We can't. We know that  
20 there are new statutes that are taking effect. The California  
21 Privacy Act, January 1, 2020, Facebook will be complying with.  
22 Facebook has admitted they have at least a thousand employees  
23 working to comply with the general data protection regulation.  
24 So -- and those will impose standards that the Court will want  
25 to consider in crafting the future remedy. And the question is

1 how do we look backward here?

2 I would respectfully submit that these things all need to  
3 be thought about carefully and that the firms that are looking  
4 at it need to understand this isn't another repeat of a case  
5 that's been litigated in the past. They need to have the  
6 ability to negotiate with those state attorney generals and all  
7 of the other regulatory agencies in constructive ways. And the  
8 power of *Clean Diesel*, which I was honored to be involved in,  
9 and actually by invitation in the settlement because I had good  
10 relationships with some of the state attorneys general, was  
11 that we were all facing the same direction at once.

12 Facebook's very important to our community, it's important  
13 to our economy, and they have changed the world. But it's also  
14 clear they need some regulation. They violated the FTC consent  
15 decree. They have violated their own terms of use. And it's  
16 this Court that can hold them to account.

17 There is another Facebook case up the Ninth Circuit is  
18 reviewing. That's Judge Davila's case that may be of import.  
19 But the facts here are so very different than the facts that  
20 were before Judge Davila because of the revelation of the  
21 manipulation and the targeting of these individuals.

22 So in conclusion, Your Honor, you had two other questions;  
23 one was about bankruptcy. Because I don't see the case as just  
24 about Cambridge Analytica, the bankruptcy of that entity really  
25 doesn't play a huge role in this litigation. I had a case in

1 front of Judge Alsup probably 15 years ago called *In Re:*  
2 *Northpoint Securities Litigation*. And in that case the company  
3 went under. I had the glory of litigating against all the DSL  
4 startup cases.

5 And when it's the entire ball of wax, or as in *Enron* you  
6 have a problem on the ability to recover, sometimes in those  
7 cases we named individual defendants to trigger insurance  
8 policies. There are ways out. But Facebook here has the  
9 wherewithal to pay so that's not really an issue here. Yes,  
10 it's to be monitored, but it shouldn't be wagging the tail, as  
11 you say.

12 On case management issues, I do think it would be  
13 imperative immediately to sit and have the ESI discussion with  
14 the defendants about what their preserving that's consistent  
15 with the ESI protocol for the Northern District of California.

16 The reason for that, obviously, is the scope of the kinds  
17 of communications that are available here and the very specific  
18 discussion of the preservation of data that continues, frankly,  
19 to plaintiffs' bar. And I'll give you an example.

20 We can't get the substance of texts usually, or the  
21 substance of instant messages in our private civil litigation.  
22 The government gets them so sometimes we get them because the  
23 government has received them. But having those preservation  
24 conversations early is really critical so that the defendants  
25 don't come back and say, Oh, we didn't preserve this. It's

1 going to cost \$500,000 to restore everybody's text messages, or  
2 something like that.

3 I know from my litigation against Twitter that they have  
4 other kinds of instant messaging disappearing apps now that  
5 they use. I know they can check out of default applications.  
6 All of those things are discussions that we would like to have  
7 now rather than wait.

8 So I believe, Your Honor, that's covered everything. If  
9 you have any questions, I'm available to answer them.

10 **THE COURT:** Appreciate it. Thank you.

11 **MS. WEAVER:** Thank you.

12 **MS. WOLFSON:** Good morning, Tina Wolfson on behalf of  
13 Audrey Diaz Sanchez.

14 All people are by nature free and independent and have  
15 inalienable rights. Among these are enjoying and defending  
16 life and liberty, acquiring, possessing, and protecting  
17 property, and pursuing and obtaining safety, happiness and  
18 privacy. That's from Section 1 -- Article I, Section 1, of the  
19 California Constitution.

20 I think this case is about the fundamental right to  
21 privacy that we as Americans all enjoy. And I think it's about  
22 Facebook's systemic violation of that right to privacy and a  
23 breach of the consumer trust. So I don't think -- I think  
24 Cambridge Analytica is just one example.

25 I also echo my colleague's comments about how this case



1 really does stand at the crossroads of history and I think it  
2 will be a pivotal case that informs how we as a society deal  
3 with this fundamental right to privacy while technology evolves  
4 at an exponential pace.

5 I think I'm uniquely qualified among my distinguished  
6 colleagues here -- and you really do have an embarrassment of  
7 riches -- but I think I am uniquely qualified to lead this  
8 case. First because of my experience. In addition to 20 years  
9 of class action experience both in the MDL context and  
10 otherwise, I have very deep passion for and experience in  
11 particularly privacy class actions.

12 From financial privacy cases back in the '90s that I  
13 litigated in front of Judge Kramer down the street in superior  
14 court, complex litigation, which somewhat mirrored the facts  
15 here. Banks there were collecting financial information about  
16 their consumers, creating financial dossiers, and selling those  
17 to third-party telemarketers; to my very deep data breach  
18 experience that I described in my application; and to cutting  
19 edge biometric privacy cases that we are now litigating in the  
20 Illinois Northern District.

21 So we're not just familiar with the issues. We are the  
22 forefront of making precedent on those issues such as the  
23 seminal *Neiman Marcus* case, Article III standing case. And I  
24 should mention, Your Honor, that the appeal in that case was a  
25 two-person job. My amazing partner, Ted Maya, who I list on my

1 core team, and myself. This kind of intimate knowledge of  
2 privacy cases will significantly benefit the class. We won't  
3 need to reinvent the wheels here. We know where the issues  
4 are, we know how to conduct discovery, to flush out these types  
5 of issues. We know what types of experts we need and so on.

6 **THE COURT:** Could I ask you the question that I asked  
7 one other attorney? I can't remember who anymore.

8 On the issue of filing a consolidated complaint, you know,  
9 you've got all these claims. I assume some of them are  
10 significantly weaker than others. I assume some of them  
11 probably aren't worth bringing. I don't know that for sure,  
12 but --

13 How do you -- how do you -- what's the process for sifting  
14 through the claims? And do you assert everything in the  
15 consolidated complaint? Or do you assert some of them with the  
16 understanding that the other plaintiffs who assert other claims  
17 that you haven't asserted in the consolidated complaint, those  
18 claims kind of sit to the side and get sorted out later? How  
19 does it work?

20 **MS. WOLFSON:** I think it's, basically, the latter,  
21 Your Honor. I think my job as lead counsel, were I to be  
22 appointed, is to present to you sort of the core issues for  
23 pre-trial purposes. And here, unlike in some of the data  
24 breach cases where there is no uniform law necessarily and you  
25 have to do state-by-state analysis, Facebook in its own terms

1 and conditions agrees that California law applies. And so my  
2 vision for the case primarily is California claims for a  
3 nationwide class.

4 Now, in terms of case management there are many different  
5 ways to approach that. I think the purpose of an MDL is to  
6 flush out the core substantive issues for pre-trial purposes,  
7 not to present to you a kitchen sink complaint of every single  
8 state claim that may be out there. It is definitely to  
9 streamline the proceedings and kind of get to the meat of the  
10 case hopefully for a global resolution. And if not, to inform  
11 the subsequent trial proceedings in the respective forums of  
12 how those should go forward.

13 So just want to sort of give a shout out to one other  
14 member of my core who recently -- core team who recently joined  
15 our firm. And that's Courtney Ballard Searcy. She brings 12  
16 years of complex litigation to the table, including five years  
17 at Quinn Emmanuel -- or, Quinn Oliver -- or it's Sullivan now,  
18 I think. She has deep experience in complex litigation but  
19 also in bankruptcy dealing with regulatory and government  
20 agencies IP issues and international law which may all come  
21 into play here.

22 And I should mention that the experience that I listed for  
23 myself and my team is our experience. We're not resting on the  
24 laurels and experience of others at some big firm. We are a  
25 small shop, but I think we have a significant effect.

1 Another thing I want to talk about briefly is personal  
2 accountability. I've never had the pleasure of appearing  
3 before you in the past, but I get the sense that you're looking  
4 for a leader who will be personally accountable to you, who  
5 won't fudge or hide the ball, who answers questions directly  
6 first and then provides explanations. One who's leading the  
7 big picture, but is also thinking about and familiar with the  
8 details. And I can promise you that I can deliver that because  
9 that's how I practice.

10 I also should mention that I deliberately made space for  
11 this case in my workload. For example, recently although I  
12 filed an *Intel* case I refrained from applying for leadership  
13 position there. Congratulations to Ms. Rivas for getting that  
14 lead counsel. That's fantastic. And other than my settlement  
15 work in *Experian*, which is now in settlement mode, I don't have  
16 any current MDL lead positions although I am serving on several  
17 PSC's.

18 And my final point, Your Honor, is commitment. I think  
19 you have some amazing lawyers in front of you who are dedicated  
20 to protect the rights of the plaintiff class. And while I am  
21 dedicated to all of my cases, this one is unique and special.

22 Because of my personal background, and it's not just  
23 Mr. Siegel's comment about my speaking Russian as my first  
24 language; but having grown up in a totalitarian society where  
25 there were no civil rights, I think I have a little bit of a

1 unique appreciation perhaps and emotional intelligence of what  
2 it means not to have those rights. And so I bring that kind of  
3 personal passion to my privacy cases, and particularly this  
4 case, and I think that it will serve me well in terms of my  
5 commitment and my motivation to drive it to a speedy and just  
6 resolution.

7 By the way I want to thank Your Honor for a couple of  
8 things. One is your standing order regarding confidentiality.  
9 I think that's really important overall, but in this case  
10 particularly. This is a case of public interest and I think  
11 the public has the right to know of what we're doing here. And  
12 I also want to thank you for your work ethic. I know you're  
13 fond of orders where responses are required in less than 24  
14 hours, and I actually welcome that and I appreciate that hard  
15 work because I know that it will lead to a speedy resolution  
16 for the class here.

17 Just a couple of comments on the issues that we've  
18 discussed today.

19 In terms of lead counsel, I would just implore you not to  
20 handcuff the plaintiff class. We've got five lawyers here from  
21 Gibson Dunn just for a CMC. They're amazing attorneys. I've  
22 worked with them before. They don't miss anything. And they  
23 probably have another army back in their respective offices  
24 across the country working on this case. And it is in the  
25 class's best interest to be able to use all the talent that's

1 come forward and shown an interest to litigate this case. So  
2 however you structure it formally, I would just ask that you  
3 don't limit us in using all the talent that's available.

4 Discovery stay. I don't know what more to say on that  
5 other than an interesting fact. I recently read an article  
6 that the Cambridge Analytical principals -- former principals,  
7 actually: Moving on with life and starting other data  
8 companies.

9 Who knows who has the information still and what they'll  
10 do with it in their future endeavors. So I think discovery  
11 should proceed immediately.

12 In terms of magistrates, we really appreciate Your Honor's  
13 volunteering to handle discovery issues. Of course, if that  
14 becomes cumbersome -- we don't anticipate, hopefully the sides  
15 will cooperate -- but if it does a magistrate discovery might  
16 be appropriate. And a settlement discovery as well. I think  
17 whatever lead counsel you appoint is going to want to move the  
18 case very quickly and efficiently in both litigation and  
19 potential settlement fronts. And I think that's another reason  
20 that a collaborative effort is appropriate here.

21 And unless you have any other questions, I'm done.

22 **THE COURT:** Great. Thank you very much.

23 **MS. WOLFSON:** Thank you.

24 **THE COURT:** I'm inclined to think that we should take  
25 a lunch break and then come back. I don't have a great sense

1 of how much more time we will spend together today, but I'd  
2 rather not sort of try to fit everything in before lunch. I  
3 think even if we don't decide a ton of stuff now, it will be  
4 good to start talking about a lot of this stuff.

5 So why don't we take a lunch break and return at quarter  
6 to 1. And I'm happy to hear from Facebook about any of the  
7 issues that were discussed today, sort of preliminary thoughts  
8 on any of the issues that were discussed today. Obviously  
9 including discovery.

10 I gather it's not really your place to get involved in who  
11 -- in the question of who should be appointed, but if you have  
12 any concerns that you think I should be thinking about, you  
13 know, I think it's appropriate for you to raise those. If  
14 there is any -- I'm gathering there probably is not a conflict  
15 issue with Ms. Doss, but if there's a concern that you think I  
16 should be thinking about with respect to that or anything else,  
17 I think it would be appropriate for you to flag it with me.

18 And, yeah, that's about it. So we'll see you back here at  
19 quarter to 1. Thanks.

20 (Recess taken at 11:54 a.m.)

21 (Proceedings resumed at 12:49 p.m.)

22 **THE COURT:** All right. Anything you'd like to talk to  
23 me about?

24 **MR. SNYDER:** Yes, Your Honor. So nice to just sit and  
25 relax.

1 Thank you, Your Honor.

2 I'll briefly address the points you raised and other  
3 points that were raised here in an effort to assist the Court  
4 in fashioning the most efficient and just approach to the case.

5 As I was sitting here I collected a number of comments. I  
6 would say admissions, advisedly, made by counsel. And it's  
7 actually extraordinary.

8 Flying blind. Unclear. Creative thought. Novel claims.  
9 Difficult to wrap arms around. Not a data breach. Figuring  
10 out how to plead important privacy claims. No one can say with  
11 certainty or cite a case. An evolving issue. Not something  
12 set in stone.

13 One counsel -- I forgot who, but he was impressive --  
14 checked his box on expertise but had no articulation of injury.  
15 Another articulated the harm as information in the wrong hands.  
16 Another one said, No one knows. Another one said, Breach of  
17 trust. Another said, Difficult and complex issues. Another  
18 said, Damages theories will be difficult and require a lot of  
19 creative thought. Another one proclaimed that, We're at the  
20 crossroads of history. We may be. We may not be. Another one  
21 said, This is a case about the fundamental right to privacy. I  
22 don't think they meant the 14th amendment, but it wasn't clear  
23 which right they were referring to. Another said --

24 **THE COURT:** California Constitution, I think.

25 **MR. SNYDER:** California Constitution. Okay. Another



1 said, This isn't a repeat of another case that's happened in  
2 the past. Another, I think, said, Echoing comments made by  
3 many we need regulation.

4 And so I think this is a long way to say that no counsel  
5 has articulated -- not one -- a concrete or particularized  
6 injury here. And if they can't articulate their own injury at  
7 this point in time, there's no purpose, it seems to us, served  
8 by discovery, plenary or otherwise. Because the question of  
9 standing is not only a threshold issue, it is a dispositive  
10 issue that is the trip wire for so many privacy class actions  
11 in this court and around the country on facts where the  
12 articulation of harm is far greater than even here.

13 Interestingly, the *Haughton* case, the Fourth Circuit case,  
14 the district court dismissed that case, erroneously in the eyes  
15 of the Fourth Circuit. And in that case there was a data  
16 breach, social security numbers, credit cards. One plaintiff  
17 had a credit card opened in his or her name by a thief. And  
18 even there the district court reading of the case law,  
19 erroneously, but citing substantial authority, dismissed that  
20 case. And the Fourth Circuit finding a closer case sent it  
21 back.

22 Of course, here --

23 **THE COURT:** I mean, I get the idea. I get what you're  
24 about to say is that there's no -- there's no apparent risk of  
25 identity theft. I mean, peoples' social security numbers

1 weren't taken, peoples' credit card information presumably  
2 wasn't taken. And so the injury, or the risk of injury, seems  
3 somewhat more ephemeral, right?

4 On the other hand, though, of course, we're not going to  
5 reach a final decision about standing or even about whether  
6 discovery should go forward today --

7 **MR. SNYDER:** Of course not, Your Honor.

8 **THE COURT:** -- but just to sort of begin the  
9 conversation. Even though the injury seems somewhat more  
10 ephemeral than perhaps your typical data breach case, these  
11 people entered into a relationship with Facebook and there was  
12 allegedly an understanding of some sort between these people  
13 and Facebook that they would be putting information about  
14 themselves onto their page or otherwise sharing information  
15 about themselves with a select group of people that they  
16 wouldn't want spread all over the world. And Facebook caused  
17 that private information to be spread all over the world, sort  
18 of contrary to the understanding that it had with its users.

19 And so that does seem like -- you know, somebody made  
20 reference to Justice Thomas's concurrence in *Spokeo*. That does  
21 seem like kind of a privacy violation that is tangible enough  
22 to constitute Article III injury.

23 **MR. SNYDER:** That is the argument, I think, that we'll  
24 hear. And I'll have two just brief responses and then I will  
25 endorse Your Honor's admonition that we're not arguing for all

1 time here. But my impressions are, first, just a factual  
2 clarification. Even as alleged, I think Facebook didn't cause  
3 the information to be spread into the world. There was no data  
4 breach. Users shared certain information, obviously, with  
5 third-party apps. They gave their consent to Facebook to do  
6 so. And then things went wrong when a developer, Mr. Kogan and  
7 Cambridge Analytica, violated Facebook's policies and then  
8 misled people about how they intended to use that information.

9 So while Facebook was a necessary --

10 **THE COURT:** I don't think that's how they allege it or  
11 how many of them allege it, right? The way they allege it is  
12 that Facebook made a promise not to allow third parties to get  
13 user information without permission, and Facebook allowed these  
14 apps to operate in a way that Facebook knew was going to give  
15 third parties information about users who had not given their  
16 permission.

17 **MR. SNYDER:** I guess my point is, Your Honor, that  
18 consent was given to --

19 **THE COURT:** But that's not how it's alleged. I mean,  
20 you made reference to it. Even as they allege it happened this  
21 way --

22 **MR. SNYDER:** Fair enough.

23 **THE COURT:** -- I don't think that's correct.

24 **MR. SNYDER:** Fair enough. So the first point is in  
25 terms of the causative link I think that really -- that while

1 Facebook was a link in the chain of events, had Facebook's  
2 policies not been abused and violated by third parties and had  
3 they not misled people about how they intended to use the  
4 information, the information would not have been broadly  
5 disseminated.

6 The second point is I do think that under Article III and  
7 *Spokeo* and its progeny, more is required than not only -- not  
8 the threadbare, but really the nonexistent actual injury  
9 alleged here.

10 I'll give you an example. I think we keep on beating this  
11 drum in our papers.

12 Two of the complaints allege -- or, a number of the  
13 complaints allege -- that the injury is battery drainage.  
14 Another says Donald Trump's election. Those obviously are  
15 silly and not going to be actionable. But I think you need to  
16 say more than, My information was taken by a third-party and  
17 used, and I didn't like the way they used it. You gave consent  
18 to the third-party to take your information and use it for some  
19 other purpose.

20 And I think this will be for Your Honor to grapple with.  
21 And my point in raising these issues today is simply to say  
22 that this standing issue is threshold, is dispositive. In  
23 fact, some of the counsel approached me in the hall and said,  
24 If I'm lead counsel I might be in agreement with you that we  
25 should get a consolidated complaint on file, see whether it's

1 30 or 70 or 700 causes of action. We then will look at the  
2 complaint, we'll promptly file a motion; mostly on standing,  
3 but there are other fatal flaws in a number of the main claims.  
4 And we could meet and confer with lead counsel.

5 And there may be some small group of documents that could  
6 be helpful to them and we would agree to produce. We may look  
7 at it and say we think more than ever that a complete stay is  
8 necessary. But I think it's premature to burden the Court with  
9 that issue now. And I'm hopeful that lead counsel and we can  
10 agree on ground rules and the efficient progress of the case so  
11 we can tee up this issue quickly, get it in front of Your  
12 Honor.

13 **THE COURT:** Let me ask you a couple additional  
14 questions about that, if I could.

15 Number one, do you -- I want to talk about the way in  
16 which it would be teed up. But first, one more question about  
17 your anticipated motion to dismiss.

18 **MR. SNYDER:** Yes.

19 **THE COURT:** I realize a consolidated complaint has not  
20 been filed so you can't predict what you'll say in your motion  
21 to dismiss.

22 **MR. SNYDER:** Sure.

23 **THE COURT:** But if you lose on standing, do you agree  
24 that some of these claims would be able to go forward?

25 **MR. SNYDER:** It depends on what the claims are. For

1 example, if they're Unfair Competition Law claims are deficient  
2 on multiple grounds. Stored Communication Act claims we think  
3 are fatally flawed. Negligence, barred by the economic laws  
4 rule. Breach of contract we think is fatally flawed. Unjust  
5 enrichment, duplicative of the barred contract claim. Invasion  
6 of privacy we think doesn't meet any of the statutory criteria.  
7 And that, again, we don't think there is a legally protected  
8 privacy interest in the Facebook data on the facts of this case  
9 as alleged under the constitutional right to privacy that's  
10 been invoked.

11 So the answer is --

12 **THE COURT:** But, I mean, if they have enough factual  
13 allegations from which you could conclude that they suffered a  
14 privacy injury, then I assume it also means that they have --  
15 will have stated a claim for invasion of privacy.

16 **MR. SNYDER:** Those are big ifs. And so we think that  
17 the entire complaint will be --

18 **THE COURT:** I'm just trying to get a sense of -- in  
19 terms of assessing whether discovery should go forward before a  
20 motion to dismiss is adjudicated, I'm trying to get a sense of  
21 whether the only thing I really need to take a hard look at is  
22 standing; or whether if I conclude that, you know, that they  
23 will be able to allege standing, or they will likely be able to  
24 allege standing, is that -- can we -- from there can we say,  
25 Well, they're going to be able to pursue at least some of their

1 substantive claims.

2           **MR. SNYDER:** So let me be clear. And this is not a  
3 reflexive knee jerk defendant who always says the case should  
4 be dismissed. But we do not believe that there is a claim on  
5 these facts. We understand that people are angry, upset. We  
6 understand that this created a broad discussion about the  
7 nature of the digital age and the boundaries of privacy and the  
8 rights and responsibilities of companies; and obviously,  
9 leaders, regulators, legislators and others are grappling with  
10 these important issues. And my client has made clear that it  
11 agrees that this is a very important debate to have.

12           So whether we're at the crossroads of history in terms of  
13 the internet or not, we believe that this is not the forum to  
14 decide or adjudicate any of these issues. And so whatever  
15 claim is slapped onto or labeled this conduct, this conduct is  
16 not actionable.

17           So this is a long way to say we believe we'll have an  
18 omnibus motion that is directed at the entire complaint. And  
19 that for that reason, among others, discovery now is putting  
20 the cart before the horse. This is not, Your Honor, you know,  
21 the privacy, surveillance, identity theft, data harvesting,  
22 data breach case that the plaintiffs' imagine. It's just not.

23           And I understand why people jumped on the bandwagon here  
24 in filing this lawsuit, or these lawsuits, because these events  
25 did -- a broad discussion about critical issues in our society.

1 But that doesn't mean they translate into cognizable claims.  
2 And we think that in the end when Your Honor looks at  
3 everything, particularly given the state of the law today, that  
4 you'll agree with us. And for that reason, it's efficient and  
5 fair and sensible to defer discovery.

6 I'll say one other thing. One counsel talked about  
7 preserving the status quo. The status quo is preserved.  
8 There's no emergency here. No one's home is burning down and  
9 no one's -- there's no imminent harm. And I think another  
10 counsel acknowledged tacitly, or even explicitly, that they  
11 want to conduct discovery now as a fishing expedition to find  
12 new claims. And I don't blame them; because the ones they have  
13 they just don't make it.

14 This is not only a case that is a work in progress, one  
15 person called it a kitchen sink or not a kitchen sink. It's  
16 really a jumping of the gun filing a lawsuit and then  
17 realizing, woops, this is not a data breach case. How are we  
18 going to figure out a cause of action here to fit these facts?  
19 And there is no cause of action on these facts way beyond just  
20 standing.

21 So --

22 **THE COURT:** So on the issue of timeline and teeing all  
23 of this up -- so I apologize for not noticing this before if  
24 somebody pointed it out to me, but you have now reached an  
25 agreement on the timeline for adjudicating a motion to dismiss.



1           **MR. SNYDER:** Yes, Your Honor.

2           **THE COURT:** That's in the plaintiffs' case management  
3 statement.

4           **MR. SNYDER:** Yes.

5           **THE COURT:** And so whenever class counsel is  
6 appointed, lead counsel is appointed, 60 days from then the  
7 plaintiffs file a consolidated complaint. Let's say I appoint  
8 lead counsel on Friday. So that -- so in like mid September  
9 they would file a consolidated complaint?

10          **MR. SNYDER:** Yes.

11          **THE COURT:** And then early November you would file  
12 your motion to dismiss. Or the defendants would -- if there  
13 are other defendants, motions to dismiss.

14          And then early December, opposition. Late December,  
15 reply. Hearing sometime in January or February is, basically,  
16 what you're contemplating.

17          **MR. SNYDER:** Yes, Your Honor. And I would add,  
18 consistent with my earlier comments, that we would propose that  
19 in September and October while we're preparing our motion we  
20 will meet and confer with lead counsel on discovery issues. If  
21 we believe, after reading the consolidated complaint, that a  
22 stay of all discovery is appropriate we'll take that position  
23 in the meet and confer. Maybe lead counsel will agree, maybe  
24 they won't. Maybe they'll ask for some limited discovery and  
25 we'll agree. And if not, we'll file a motion to stay on a

1 substantially parallel track with a motion or --

2           **THE COURT:** It seems to me that what might make  
3 sense -- and tell me what you think of this -- is let's say I  
4 appoint lead counsel in the next couple days. That we tee up  
5 your motion to stay discovery quite promptly. And we -- so we  
6 tee that up so that it can be -- it can be resolved sometime in  
7 the next several weeks. So that we know, even before -- even  
8 while -- so that we know even before lead counsel files the  
9 consolidated complaint we know, and they know, whether they're  
10 going to get discovery.

11           **MR. SNYDER:** The problem with that, Your Honor,  
12 respectfully, is that I don't think it's fair at all to even  
13 contemplate discovery particularly in a case of this magnitude  
14 when we have -- when we don't have an operative pleading.  
15 There's no exigent or exceptional circumstance to, I think,  
16 create --

17           **THE COURT:** Well, what I was thinking is that if we  
18 wait until after the consolidated complaint is filed, right?  
19 And then let's say I conclude --

20           I'm trying to think ahead and prevent this case from being  
21 bolloxed up in the pleadings for too long. It may be the case  
22 -- that the cases are dismissed on the pleadings. But if  
23 they're not going to be dismissed on the pleadings, I don't  
24 want it to be bolloxed up in the pleadings for too long before  
25 we really get the case moving.

1       So my concern is the following scenario: You know, lead  
2       counsel gets appointed, we wait 60 days for the filing of a  
3       consolidated complaint, you file your motion to dismiss, we  
4       start fighting over whether discovery should go forward. While  
5       you all are briefing your motion to dismiss, I conclude that  
6       discovery should go forward. They start getting discovery and  
7       then they want to amend their complaint based on the discovery  
8       that is received. So we end up not even adjudicating the  
9       motion to dismiss you've filed in early November or whenever it  
10      is that you would file it, and we'd have to start that whole  
11      process again based on yet another amended complaint that's  
12      based on the discovery they have.

13       So that's why I was thinking why not decide this discovery  
14      question earlier rather than later. Maybe you win on it and  
15      maybe there's no discovery until next January or February.  
16      Maybe you lose on it. But if you lose on it, you've lost on it  
17      at a time where we've not created any significant  
18      inefficiencies.

19       **MR. SNYDER:** I guess my response would be again, Your  
20      Honor, before we have a consolidated complaint it's going to be  
21      difficult to have a meaningful discussion with the other side.  
22      Because for all we know there are going to be 25 new theories.  
23      And it sounds like from the case management statement they want  
24      to substantially expand not only the legal theories but also  
25      the factual allegations to include maybe hundreds of other

1 acts. So we just don't know what we're shooting at. So it  
2 would be a formalistic conversation that isn't worth having.

3 And I also think -- meaning to say I don't think until I  
4 see the complaint I can be in a position to consent to any  
5 discovery, assuming we're going to consent to anything.

6 **THE COURT:** Well, the place where we're in now, you  
7 may say we don't have an operative complaint. You do. You  
8 have many operative complaints.

9 **MR. SNYDER:** Right, but I think the contemplation, and  
10 all plaintiffs agree, that should not be the operative  
11 complaint in this proceeding. We should have a consolidated  
12 complaint. Meaning the plaintiffs agree there should be a  
13 single complaint here that will not resemble the 30 complaints  
14 that are now strewn across the country.

15 The other thing --

16 **THE COURT:** Excuse me. Before I forget, can I ask you  
17 -- I'll remember my question. Go ahead. I don't want --

18 **MR. SNYDER:** I know the question. I read your mind.  
19 I also think the reason we put 45 days and not 60, by way of  
20 example, and 21 days instead of 30, in our briefing, which is  
21 not as aggressive as we could have asked for, is because we  
22 don't want to be the defendant who is trying to slow down the  
23 case.

24 And I actually think that if Your Honor grants the motion  
25 and it goes up to the Ninth Circuit, if Your Honor denies the

1 motion, February and January is not, I think, an inordinate  
2 delay in a case of this magnitude where we're here in mid-July  
3 for the first time. It's no fault of either party that we  
4 were, quote, "delayed," close quote, in an MDL proceeding.

5 So for all intents and purposes it's mid-July. And  
6 waiting until January or February to see the contours of the  
7 operative pleading, maybe Your Honor will dismiss it all, maybe  
8 you'll dismiss 80 percent of it. Then fashion a discovery plan  
9 off of a complaint that exists at the time. I think that's a  
10 reasonable time frame, and I don't see that as undue delay at  
11 all. And I think it is the sensible and fair approach. I  
12 think it's unfair to ask a defendant who is now facing 30  
13 complaints, is going to face a 300-page complaint we haven't  
14 seen yet --

15 **THE COURT:** I hope it's not 300 pages.

16 **MR. SNYDER:** Well, now whoever is drafting the  
17 complaint can't do a 300-page complaint, so that's why I said  
18 it.

19 **THE COURT:** Have to have less than 300. 299.

20 **MR. SNYDER:** I'm just being honest, to have a  
21 conversation, much less advise my client on discovery, when we  
22 don't know what the pleading is that we're fighting I think is  
23 just not fair. And it doesn't really make sense here. And I  
24 can assure Your Honor that if there is a discovery plan that we  
25 will attack it with dispatch and we will not be ever the party

1 seeking to delay. That's not our -- that's not the way my firm  
2 litigates, not the way Facebook litigates. If the case is  
3 going forward on the merits we want to get to those merits.  
4 And we will. If we get to them in February as opposed to  
5 November, I think it's really -- I think that's the prudent  
6 approach here.

7 To your question that you didn't ask but I divined --

8 **THE COURT:** Are you going to --

9 **MR. SNYDER:** Let's see.

10 **THE COURT:** Go ahead.

11 **MR. SNYDER:** I think that if they cut causes of action  
12 from the complaint, and now let's say complaints 2 through 26  
13 have cause of action that were abandoned in this consolidated,  
14 what happens, right?

15 I think that -- we were just talking about it. We haven't  
16 researched this, but our sense is that it can't be that after  
17 the case is MDL'd and litigated through summary judgment it  
18 then gets remanded to their home districts and then you have  
19 plenary discovery on those claims that weren't filed in the  
20 consolidated case.

21 **THE COURT:** I think that's probably right. The  
22 question is whether we in these MDL proceedings would do  
23 wrap-up on any claims that some other plaintiff wanted to  
24 pursue that lead counsel determined should not be in the  
25 consolidated complaint.

1           **MR. SNYDER:** Right. I think that if a plaintiff from  
2 one of the 30 cases wants to pursue a case -- a claim here that  
3 lead counsel doesn't, and there's a dispute as to that, maybe  
4 those do get severed. But I think we need to research it.

5           **THE COURT:** So maybe those do get severed. What is --  
6 I'm not holding you to anything --

7           **MR. SNYDER:** No, no. It may be that at that point  
8 there needs to be some recognition that that plaintiff, you  
9 know, either has to find a way to preserve his rights; and it  
10 may be to sever that claim from the consolidated action. We're  
11 going to research this. I'm sure it's come up.

12           As to Cambridge Analytica and its bankruptcy, we don't  
13 really take any position there. Really it's for the plaintiffs  
14 to figure out. I agree they have to go to the bankruptcy court  
15 if they want to get discovery from the entity. They don't need  
16 bankruptcy court approval if they want discovery from the  
17 individuals. But I assume the individuals would hide behind  
18 the entity. It's our experience that bankruptcy courts,  
19 particularly in this circumstance, routinely grant such  
20 permission.

21           And we certainly share the plaintiffs' view that discovery  
22 from Cambridge Analytica is essential because Cambridge  
23 Analytica's role in the underlying events is central not only  
24 to the case but a cornerstone of our defense. To the extent we  
25 go to the merits.

1           **THE COURT:** So I gather what you're saying is that you  
2 would, in the bankruptcy court, you would support the  
3 plaintiffs' request for permission to pursue discovery against  
4 Cambridge Analytica in this case.

5           **MR. SNYDER:** Yes. Because obviously, we would be at a  
6 severe disadvantage if we had to respond to discovery, sit for  
7 depositions, answer interrogatories, without concurrently  
8 developing our theory of the case. Which, of course, on the  
9 facts here is that Cambridge Analytica, Mr. Kogan and others,  
10 violated our policies and then lied to our users about how they  
11 intended to use this information.

12           And so this is another reason why we think it makes sense  
13 to defer discovery also until resolution of the motion to  
14 dismiss because we need to play that out in the bankruptcy  
15 court. Because if in the bankruptcy court -- I think unlikely  
16 but it's possible -- we're denied essential discovery, we may  
17 be here asking for a stay because our due process rights can't  
18 be preserved if Cambridge Analytica is hiding behind the  
19 bankruptcy court and not producing vital information.

20           Again, this is premature. But I think it's another reason  
21 why we should hit the pause on discovery, sort out the  
22 bankruptcy issues, sort out the motion to dismiss, and then we  
23 can start fresh and ready for action in 2019. Hard to believe.

24           Let's see. Is there anything else? I think I've hit  
25 everything. And I'm praying that now all 30 lawyers don't



1 respond to me.

2 **THE COURT:** God, no. Let me just --

3 **MR. SNYDER:** Raise your hand if you disagree with  
4 everything I said.

5 **THE COURT:** Let me look at my list and see if there  
6 was anything else I wanted to discuss with you.

7 I mean, should we -- I suppose -- you know, probably the  
8 best thing to do -- I think it is worth starting to have the  
9 conversation about these issues. But probably the best thing  
10 to do is appoint lead counsel and then have a case management  
11 conference. Even telephonic. We don't need to make everybody  
12 fly out here. But just for the purpose of talking about things  
13 like when will I decide the motion to stay discovery?

14 **MR. SNYDER:** When will we go to bankruptcy court.  
15 Maybe we can come up with a plan to go to bankruptcy court  
16 together hand in hand.

17 **THE COURT:** Sounds like that part will be hand in  
18 hand. Let me see.

19 Do you want to tell me sort of -- give me a summary of  
20 everything you've done to make sure that evidence is preserved  
21 in this case?

22 **MR. SNYDER:** Yeah. I mean, I can say that immediately  
23 upon the -- these issues arising, Facebook preserved all  
24 documents, was -- and issued all appropriate document retention  
25 notices to all relevant custodians. That's been in place.

1 That's been in place for many months now. Obviously, as  
2 reported and as commented on Facebook, it is subject to  
3 regulatory review throughout the United States, outside the  
4 United States. And so everything is locked down, and has been  
5 locked down.

6 **THE COURT:** What about -- somebody mentioned texts.

7 **MR. SNYDER:** I think that the document hold applies to  
8 all electronic communications. And it's been issued -- I think  
9 it's been updated and additional custodians are added as  
10 they're identified, et cetera, et cetera. But this is being  
11 handled, you know, according to, you know, to the letter and  
12 spirit of the law and Facebook's own internal policies which  
13 are quite robust on these issues. So there's no reason for  
14 concern about document preservation in this case.

15 **THE COURT:** One small thing. I'm sure you've seen in  
16 my standing order this reference -- sort of statement to  
17 defendants in class actions urging them to consider whether to  
18 do cross motions for summary judgment as to named plaintiffs  
19 before proceeding with -- before doing class cert proceedings.  
20 I assume you would say that in this case that's not an  
21 appropriate way to go about it. That we would want to do class  
22 cert first, then do summary judgment.

23 **MR. SNYDER:** May I confer with my --

24 **THE COURT:** Sure. And you can think about it and talk  
25 to me about it next time.

1 (Pause.)

2 **MR. SNYDER:** The smartest people I know in the world  
3 tell me that we would want to do summary judgment motions as to  
4 named plaintiffs before because it may be they have no  
5 individual injury as opposed to -- as opposed to -- you know --

6 **THE COURT:** So that's something that we'll need to  
7 talk about further when we -- usually I defer to the defendant  
8 on that. In a normal class action, I defer to the defendant on  
9 that. In MDL context I'm not sure that I would. I would want  
10 to think carefully about it as to whether it makes sense. My  
11 gut was it does not make sense in this context, but we can talk  
12 further about that.

13 Let me see.

14 **MR. SNYDER:** Oh. Your Honor, there's one issue on my  
15 checklist. I'm not sure you and I discussed, but just to be  
16 complete and complete the record so it's not left as a dangling  
17 participle.

18 There was one counsel who served on a Senate committee.  
19 And we've discussed the matter with her, and based on her  
20 representations and what we know at present we have no  
21 objection to her involvement in the case in any role that she  
22 plays.

23 **THE COURT:** Okay. Thank you. Any views on whether  
24 this should go to a magistrate judge for settlement purposes  
25 for discovery purposes?

1           **MR. SNYDER:** My answer is whatever Your Honor wishes,  
2 but I can't imagine you'd want to miss out on all the fun.  
3 Obviously, we defer to Your Honor's judgment and position on  
4 that.

5           **THE COURT:** Okay. So -- all right. Well, I guess the  
6 way we should proceed is --

7           Oh, one other item on my list. We have all these cases  
8 that were filed in the Northern District that were related to  
9 me but have not been consolidated by the MDL panel to be part  
10 of the proceedings yet. I assume there's no reason why I  
11 shouldn't just go ahead and consolidate all those cases.

12           **MR. SNYDER:** No reason, Your Honor. We agree.

13           **THE COURT:** And I assume just -- if some plaintiff's  
14 counsel disagrees with that, raise your hand.

15           (No response.)

16           **THE COURT:** All right. Don't see any. And then there  
17 was one -- there's one separate case called *Burk versus*  
18 *Facebook* that you identified in your case management statement  
19 as being related. That's maybe in front of Judge -- Chief  
20 Judge Hamilton. Is that right? Oh, Yvonne Gonzalez Rogers.  
21 Oh, she's referred it to us. Okay. Okay.

22           **MR. SNYDER:** Apparently, *sua sponte* referral that  
23 hasn't been resolved yet.

24           **THE COURT:** Got it. So Kristen just told me that she  
25 has referred it to us to relate. And we haven't done that yet.

1 So we'll do that. And then we'll consolidate all of those  
2 cases. So, yeah, we can go ahead and grant that. We can go  
3 ahead and relate that case from Judge Gonzalez Rogers and we  
4 can go ahead and consolidate all of the individual Northern  
5 District of California cases into the MDL.

6 And then I think that's it. So I think that what we'll do  
7 is we will appoint -- we'll -- I'll appoint lead counsel and  
8 schedule a telephonic case management conference with you all  
9 for about two weeks after that and we will decide how to tee up  
10 the discovery issue.

11 My tentative inclination here is to tee up the discovery  
12 issue quickly. And my tentative inclination is that the  
13 proposal in the plaintiffs' case management statement for  
14 allowing that discovery to go forward before a motion to  
15 dismiss is adjudicated makes sense. That the floodgates should  
16 not be opened. But that plaintiffs' -- that proposal in the  
17 case management statement to allow that discovery to go forward  
18 makes sense. But I will allow you to file briefs on that.

19 **MR. SNYDER:** Let me just say, because I didn't respond  
20 to that.

21 **THE COURT:** Sure.

22 **MR. SNYDER:** With -- respectfully, we think that the  
23 discovery plan that they outline is not only overbroad, but  
24 almost irrationally broad. As framed their requests,  
25 basically, call for every document under the sun, many of which

1 are not tailored to the facts of this case at all.

2 **THE COURT:** Yeah, but the facts of this case -- I  
3 mean, I'm glad you -- I'm glad you continued this discussion.  
4 Because the facts of this case, the cases were precipitated by  
5 the Cambridge Analytica revelation. But the facts alleged in a  
6 lot of these complaints are that Facebook is violating, has  
7 violated, my rights, privacy rights, Stored Communications Act  
8 rights, whatever else, by sharing my information with third  
9 parties, with third-party app developers, even though Facebook  
10 told me that they were going to seek my permission before they  
11 did that.

12 And so the allegations I don't think, at least in some of  
13 the complaints, are limited to the information that Facebook  
14 allegedly provided Cambridge Analytica. Right?

15 **MR. SNYDER:** But, Your Honor, they did give their  
16 permission in every case.

17 **THE COURT:** Right. But I'm talking about their  
18 allegations. The plaintiffs' allegations. The allegations are  
19 I didn't give permission. Right?

20 **MR. SNYDER:** Right, but --

21 **THE COURT:** And at some point, whether it's through  
22 something that's judicially noticeable at the motion to dismiss  
23 stage or at summary judgment, you're going to be able to  
24 dispute that. But what they allege is that they told me that  
25 they were going to get my permission before they did it, and

1 they didn't get my permission.

2 **MR. SNYDER:** But a bare allegation which is  
3 demonstrably false, and I can pull up right now and show you  
4 and you can take judicial notice --

5 **THE COURT:** Well, I don't know what we can take  
6 judicial notice of --

7 **MR. SNYDER:** My point is when we make a sworn  
8 representation, which we will at the appropriate time, that  
9 this was the state of user consent at the time. That the  
10 information could not and would not have been provided to a  
11 third-party app unless the user gave permission and consent.  
12 In the face of that evidence, given the fact that there are so  
13 many grounds for dismissal with prejudice, why should they be  
14 entitled to just go on a fishing expedition --

15 **THE COURT:** Because the key word that you just uttered  
16 was "evidence," right?

17 **MR. SNYDER:** Well, I meant evidence which supports --

18 **THE COURT:** You don't use evidence in a motion to  
19 dismiss.

20 **MR. SNYDER:** Okay. I misspoke. Information about  
21 which the Court can take judicial notice under every convention  
22 and rule. I'll give you an example.

23 **THE COURT:** But the information you were describing  
24 doesn't sound like the kind of information of which the Court  
25 can take judicial notice.

1           **MR. SNYDER:** I think the Court could take judicial  
2 notice. And I actually don't think a single plaintiff would  
3 dare allege under Rule 11 --

4           **THE COURT:** Especially with that threatening look you  
5 just gave.

6           **MR. SNYDER:** Your Honor, this is not -- this is not a  
7 controversy. There's no debate that every user whose  
8 information ended up in Aleksandr Kogan's quiz, that all that  
9 information was given to Aleksandr Kogan and his quiz app with  
10 permission of the user. No one's going to dispute that.

11           What they're saying, is what Kogan did with that, in  
12 violation of our policies, caused them harm and gives rise to a  
13 cause of action. Not -- and so in the face of that, they want  
14 us to immediately identify all app developers whom Facebook  
15 gave permission to access user data information. That's Words  
16 With Friends. That's every single -- that's millions and  
17 millions and potentially billions of pieces of information.

18           The first one is bizarrely overbroad. The second one  
19 makes no sense: Disclose the means to identify all Facebook  
20 users whose personal information was accessed or obtained by  
21 app developers. Well, that's going to be perhaps a billion  
22 700 million people. I don't know how many billions. Two  
23 billion people? Consumers' personal information was obtained  
24 by app developers because that's the whole point of -- that's  
25 why people love Facebook. Because you can access apps, whether



1 the PayPal app, or the ESPN app. That's just the way the  
2 internet works.

3 **THE COURT:** But it was Facebook's choice to conquer  
4 the world. So if we need a world-wide search for stuff that  
5 Facebook's done wrong, isn't that Facebook's problem?

6 **MR. SNYDER:** No, Your Honor, because there is no  
7 allegation that Facebook allowing users to access third-party  
8 apps for their benefit and sharing information with that  
9 third-party app is unlawful; yet they want us to identify every  
10 single app developer whom Facebook gave permission to access  
11 user information. That's every app on Facebook's platform.  
12 That is so overbroad.

13 **THE COURT:** Maybe it should be limited. The way they  
14 wrote it is including via friends' permission practice. Maybe  
15 it should be only via its friends permission practice. I don't  
16 know. Maybe that wouldn't narrow it down, though.

17 **MR. SNYDER:** It wouldn't narrow it down. And they're  
18 not alleging giving access to your friends in the old version  
19 that I guess was abolished in 2013. They're not even alleging  
20 that that is actionable. Sharing friends' information with a  
21 third-party app --

22 **THE COURT:** I think you may have engaged in a -- I  
23 mean, that's why it would be useful, of course, to have a  
24 consolidated complaint. And maybe this is an indirect way of  
25 supporting the point you're making in that regard.

1           **MR. SNYDER:** Yes, Your Honor.

2           **THE COURT:** But I think you're engaging in a little  
3 bit of a selective re-writing of their complaints. But it will  
4 be a lot easier to determine that once we have a consolidated  
5 complaint.

6           **MR. SNYDER:** And we've read the complaints carefully  
7 and in their totality because we're obviously thinking about  
8 the motion to dismiss. And it is not the plaintiffs' theory,  
9 nor could it be, that every time personal information was  
10 obtained by an app developer that that's actionable. That --  
11 otherwise every third-party interaction with Facebook users is  
12 unlawful; yet third-party app interaction with Facebook users  
13 is part of the fabric of the Facebook platform, why so many  
14 people use it, like it, benefit from it, and for all sorts of  
15 reasons. Mostly good. Almost entirely good.

16           And so what they want us to do is essentially identify  
17 every single third-party app. And then every user who ever --  
18 whose personal information was accessed. That's probably  
19 2 billion people. Billion, 700 million people. That's nothing  
20 to do with this case. It's not a fishing expedition. This is  
21 an irrational series of requests untethered to the issues in  
22 this case. And I was going to say the claims in this case, but  
23 I don't even know what the claims in this case are yet so how  
24 is it fair for them to get plenary discovery into our data when  
25 we don't know what the claims are.

1 I can assure Your Honor this: When we get their  
2 consolidated complaint, I can demonstrate, Your Honor, why each  
3 of these requests is not only overbroad, but untethered to  
4 anything in this case.

5 **THE COURT:** Okay. I appreciate your comments.

6 **MR. SNYDER:** Thanks.

7 **THE COURT:** Okay. So I will issue an order appointing  
8 lead counsel and scheduling a telephonic case management  
9 conference fairly shortly, either later this week or sometime  
10 next week.

11 **MR. SNYDER:** Your Honor, should we meet and confer in  
12 advance and submit something very short, two pages, if we come  
13 up with something or have ideas that we agree on maybe that you  
14 appoint lead counsel --

15 **THE COURT:** You mean --

16 **MR. SNYDER:** In advance of the next phone conference?

17 **THE COURT:** Yeah. I'll probably ask you to -- what  
18 I'll do is I'll schedule the conference roughly two weeks after  
19 the appointment of lead counsel and ask you to submit something  
20 in advance.

21 **MR. SNYDER:** Thank you.

22 **THE COURT:** Thanks very much.

23 **MR. SNYDER:** Thanks for the time, Judge.

24 (Recess taken at 1:33 p.m.)

25 ---oOo---

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

DATE: Thursday, July 19, 2018



/s/Vicki Eastvold

Vicki Eastvold, RMR, CRR  
U.S. Court Reporter